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ENGLISH TRANSLATION WITH ARABIC TEXT

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SECTION 2

Categories of Divorce and Its Rulings

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HADITH COMPILED BY

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Section 2

Categories of Divorce and Its Rulings

CHAPTER 1

Method Of Divorce According To The Sunnah, And Some Of Its Rulings

[Hadith 28132 to 28140]

Hadith 28132

عن زرارة، عن أبي جعفر (عليه السلام)، أنّه قال: كل طلاق لا يكون على السنّة، أو طلاق على العدة فليس بشيء، قال زرارة: قلت لابي جعفر (عليه السلام): فسر لي طلاق السنة وطلاق العدة،

From Zurarah, from Abu Ja'far (peace be upon him), that he said: Every divorce that is not according to the Sunnah, or divorce during the waiting period, is nothing. Zurarah said: I said to Abu Ja'far (peace be upon him): Explain to me the divorce of the Sunnah and the divorce of the waiting period.

فقال: أما طلاق السنّة: فاذا أراد الرجل ان يطلق امرأته فلينتظر بها حتى تطمث وتطهر، فاذا خرجت من طمثها طلقها تطليقة من غير جماع، ويُشهد شاهدين على ذلك، ثمّ يدعها حتى تطمث طمثتين فتنقضي عدتها بثلاث حيض، وقد بانت منه، ويكون خاطبا من الخطّاب، إن شاءت تزوّجته،، وإن شاءت لم تزوجه وعليه نفقتها والسكنى ما دامت في عدَّتها، وهما يتوارثان حتى تنقضي عدتها.

He (the Imam) said: As for the divorce of the Sunnah: When a man wants to divorce his wife, let him wait for her until she menstruates and becomes pure. When she comes out of her menstruation, let him divorce her with one divorce without having had intercourse, and let him have two witnesses witness this. Then let him leave her until she menstruates twice, so her waiting period ends with three menstrual cycles, and she becomes separated from him. He becomes one of the suitors - if she wishes, she may marry him, and if she wishes, she need not marry him. He owes her maintenance and housing as long as she is in her waiting period, and they inherit from each other until her waiting period ends.

Hadith 28133

عن محمّد بن مسلم، عن أبي جعفر (عليه السلام)، قال: طلاق السنّة: يطلقها تطليقة ـ يعني: على طهر من غير جماع بشهادة شاهدين ـ ثمّ يدعها حتى تمضى أقراؤها، فإذا مضت أقراؤها فقد بانت منه، وهو خاطب من الخطّاب، إن شاءت نكحته، وإن شاءت فلا، وإن أراد أن يراجعها أشهد على رجعتها قبل أن تمضي أقراؤها، فتكون عنده على التطليقة الماضية.

From Muhammad ibn Muslim, from Abu Ja'far (peace be upon him), he said: The divorce of the Sunnah is: He divorces her with one divorce - meaning: during a state of purity without intercourse, with the testimony of two witnesses - then he leaves her until her menstrual periods

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pass. When her menstrual periods have passed, she becomes separated from him, and he is one of the suitors. If she wishes, she may marry him, and if she wishes, then no. If he wants to take her back, let him have witnesses to his taking her back before her menstrual periods pass, and she remains with him on the basis of the previous divorce.

قال: وقال أبو بصير عن أبي عبدالله (عليه السلام) وهو قول الله عزّ وجلّ: (الطلاق مرتان فامساك بمعروف أو تسريح باحسان) التطليقة الثانية: التسريح باحسان.

He said: And Abu Basir said from Abu Abdullah (peace be upon him), and it is the saying of Allah, Mighty and Majestic: "Divorce is twice, then either keep her with honor or release her with kindness." [Quran, 2:229] The second divorce is the release with kindness.

Hadith 28134

عن أبي بصير، عن أبي عبدالله (عليه السلام)، قال: سألته عن طلاق السنّة، فقال: طلاق السنّة، إذا أراد الرجل أن يطلق امرأته، يدعها إن كان قد دخل بها حتى تحيض ثمّ تطهر، فاذا طهرت طلقها واحدة بشهادة شاهدين، ثمّ يتركها حتى تعتد ثلاثة قروء، فاذا مضى ثلاثة قروء فقد بانت منه بواحدة، وكان زوجها خاطبا من الخطّاب، إن شاءت تزوَّجته، وإن شاءت لم تفعل،

From Abu Basir, from Abu Abdullah (peace be upon him), he said: I asked him about divorce according to the Sunnah. He said: Divorce according to the Sunnah is when a man wants to divorce his wife - if he has consummated the marriage with her, he should leave her until she menstruates then becomes pure. When she becomes pure, he divorces her once with the testimony of two witnesses, then leaves her until she completes her waiting period of three menstrual cycles. When three cycles have passed, she becomes irrevocably separated from him by one divorce, and her husband becomes like any other suitor - if she wishes, she may marry him, and if she wishes, she may not.

فان تزوجها بمهر جديد كانت عنده على اثنتين باقيتين، وقد مضت الواحدة، فان هو طلقها واحدة اخرى على طهر من غير جماع بشهادة شاهدين، ثمّ تركها حتى تمضي أقراؤها، فاذا مضت أقراؤها من قبل أن يراجعها فقد بانت منه باثنتين، وملكت أمرها، وحلت للازواج، وكان زوجها خاطبا من الخطّاب، إن شاءت تزوّجته، وإن شاءت لم تفعل،

If he marries her with a new dower, she remains with him with two remaining divorces, and one has already passed. If he divorces her once more during a state of purity without intercourse with the testimony of two witnesses, then leaves her until her cycles pass - when her cycles have passed before he takes her back, she becomes irrevocably separated from him by two divorces, gains control of her own affairs, and becomes lawful for other husbands. Her husband becomes like any other suitor - if she wishes, she may marry him, and if she wishes, she may not.

فان هو تزوجها تزويجا جديدا بمهر جديد كانت معة بواحدة باقية، وقد مضت ثنتان، فان أراد أن يطلقها طلاقا لا تحل له حتى تنكح زوجا غيره، تركها حتّى إذا حاضت وطهرت، أشهد على طلاقها تطليقة واحدة، ثمّ لا تحلّ له حتى تنكح زوجا غيره.

If he marries her in a new marriage with a new dower, she remains with him with one divorce remaining, and two have already passed. If he wants to divorce her with a divorce that makes her unlawful for him until she marries another husband, he leaves her until she menstruates and becomes pure, then he witnesses her divorce with one divorce, and then she does not become

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lawful for him until she marries another husband.

Hadith 28135

عن الحسن بن زياد، عن أبي عبدالله (عليه السلام)، قال: سألته عن طلاق السنّة، كيف يطلق الرجل امرأته؟

From Al-Hasan bin Ziyad, from Abu Abdullah (peace be upon him), he said: I asked him about divorce according to the Sunnah - how does a man divorce his wife?

قال: يطلقها في طهر قبل عدتها من غير جماع بشهود، فان طلقها واحدة، ثمّ تركها حتى يخلو أجلها فقد بانت منه، وهو خاطب من الخطاب، فان راجعها فهي عنده على تطليقة ماضية وبقي تطليقتان، فإن طلقها الثانية ثمّ تركها حتى يخلو أحلها فقد بانت منه، وإن هو شهد على رجعتها قبل أن يخلو أجلها فهي عنده على تطليقتين ماضيتين وبقت واحدة، فان طلقها الثالثة فقد بانت منه، ولا تحل له حتى تنكح زوجا غيره، وهي ترث، وتورث ما كان له عليها رجعة من التطليقتين الأوّلتين.

He (the Imam) said: He divorces her during a state of purity before her waiting period, without intercourse, with witnesses. If he divorces her once, then leaves her until her term expires, she becomes irrevocably separated from him, and he is like any other suitor. If he takes her back, she remains with him with one divorce having passed and two divorces remaining. If he divorces her a second time then leaves her until her term expires, she becomes irrevocably separated from him. If he witnesses his taking her back before her term expires, she remains with him with two divorces having passed and one remaining. If he divorces her a third time, she becomes irrevocably separated from him and does not become lawful for him until she marries another husband. She inherits and is inherited from as long as he has the right to take her back from the first two divorces.

Hadith 28136

عن ابن بكير، وغيره، عن أبي جعفر (عليه السلام)، أنّه قال: الطلاق الذي أمر الله عزّ وجلّ به في كتابه، والذي سن رسول الله (صلى الله عليه واله) أن يخلي الرجل عن المرأة، فاذا حاضت وطهرت من محيضها، أشهد رجلين عدلين على تطليقه وهي طاهر من غير جماع، وهو أحق برجعتها ما لم تنقض ثلاثة قروء، وكل طلاق ما خلا هذا فباطل ليس بطلاق.

From Ibn Bukair and others, from Abu Ja'far (peace be upon him), that he said: The divorce that Allah the Mighty and Majestic commanded in His Book, and which the Messenger of Allah (peace be upon him and his family) established as Sunnah, is that a man should separate from his wife. When she menstruates and becomes pure from her menstruation, he should have two just men witness his divorcing her while she is pure without intercourse, and he has more right to take her back as long as three menstrual cycles have not passed. Every divorce other than this is invalid and is not a divorce.

Hadith 28137

عن زرارة، عن أبي جعفر (عليه السلام)، قال: طلاق السنّة: إذا طهرت المرأة فليطلقها مكانها واحدة في غير جماع، يشهد على طلاقها، وإذا أراد أن يراجعها أشهد على المراجعة. أقول: المراد بالسنة هنا: المعنى الاعم الشامل لطلاق العدة، لا الاخص

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المقابل له.

From Zurarah, from Abu Ja'far (peace be upon him), he said: Divorce according to the Sunnah is: when the woman becomes purified, let him divorce her immediately with one divorce without having had intercourse, and let him have witnesses to the divorce. If he wants to take her back, let him have witnesses to the reconciliation. I (Hurr Amili) say: What is meant by Sunnah here is the broader meaning that encompasses the divorce of the waiting period (iddah), not the specific meaning that is opposed to it.

Hadith 28138

عن عبدالله بن سنان، عن أبي عبدالله (عليه السلام)، قال: قال أمير المؤمنين (عليه السلام): إذا أراد الرجل الطلاق طلقها في قبل عدتها بغير جماع، فانّه إذا طلّقها واحدة، ثمّ تركها حتّى يخلو أجلها، إن شاء أن يخطب مع الخطاب فعل، فان راجعها قبل أن يخلو أجلها أو بعده كانت عنده على تطليقة، فان طلقها الثانية أيضاً، فشاء أن يخطبها مع الخطاب إن كان تركها حتى يخلو أجلها، فان شاء راجعها قبل أن ينفضي أجلها، فان فعل فهي عنده على تطليقتين، فان طلقها الثالثة فلا تحل له حتى تنكح زوجا غيره، وهي ترث، وتورث ما كانت في الدم من التطليقتين الأوّلتين.

From Abdullah ibn Sinan, from Abu Abdullah (peace be upon him), he said: Amir al-Muminin (peace be upon him) said: When a man wants to divorce, let him divorce her at the beginning of her waiting period without having had intercourse. When he divorces her once, then leaves her until her term expires, if he wishes to propose among the suitors he may do so. If he takes her back before her term expires or after it, she remains with him having received one divorce. If he divorces her a second time as well, and he wishes to propose to her among the suitors if he has left her until her term expires, then if he wishes to take her back before her term ends, if he does so she remains with him having received two divorces. If he divorces her a third time, she is not lawful for him until she marries another husband. She inherits and is inherited from as long as she is in the blood relationship from the first two divorces.

Hadith 28139

محمّد بن علي بن الحسين، قال: روي عن الائمة (عليهم السلام): انّ طلاق السنّة: هو أنّه إذا أراد الرجل أن يطلّق امرأته تربص بها حتى تحيض وتطهر، ثمّ يطلقها في قبل عدتها بشاهدين عدلين في موقف واحد بلفظة واحدة، فان أشهد على الطلاق رجلا وأشهد بعد ذلك الثاني لم يجز ذلك الطلاق، إلا أن يشهدهما جميعا في مجلس واحد، فإذا مضت لها ثلاثة أطهار فقد بانت وهو خاطب من الخطّاب، والامر إليها، إن شاءت تزوّجته، وإن شاءت فلا.

Muhammad ibn Ali ibn al-Husayn said: It is narrated from the Imams (peace be upon them): that divorce according to the Sunnah is that when a man wants to divorce his wife, he should wait for her until she menstruates and becomes purified, then divorce her at the beginning of her waiting period with two just witnesses in one sitting with one pronouncement. If he has one man witness the divorce and then has the second witness after that, that divorce is not valid, unless he has them both witness together in one sitting. When three purifications have passed for her, she is separated and he is a suitor among suitors, and the matter is up to her - if she wishes she may marry him, and if she wishes, she may not.

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فإن تزوجها بعد ذلك تزوجها بمهر جديد، فان أراد طلاقها طلقها للسنة على ما وصفت، ومتى طلقها طلاق السنة فجائز له أن يتزوجها بعد ذلك، وسمى طلاق السنة طلاق الهدم، متى استوفت قروءها، وتزوجها ثانية هدم الطلاق الأوّل، وكل طلاق خالف طلاق السنة فهو باطل،

If he marries her after that, he marries her with a new dower. If he wants to divorce her, he divorces her according to the Sunnah as I have described. Whenever he divorces her with the divorce of the Sunnah, it is permissible for him to marry her after that. The divorce of the Sunnah is called the divorce of demolition - whenever she completes her menstrual periods and he marries her a second time, it demolishes the first divorce. Every divorce that contradicts the divorce of the Sunnah is invalid.

ومن طلق امرأته للسنة فله أن يراجعها ما لم تنقض عدتها، فإذا انقضت عدتها بانت منه وكان خاطبا من الخطاب، ولا تجوز شهادة النساء في الطلاق، وعلى المطلق للسنة نفقة المرأة والسكنى ما دامت في عدّتها، وهما يتوارثان حتى تنقضي العدة.

Whoever divorces his wife according to the Sunnah may take her back as long as her waiting period has not ended. When her waiting period ends, she is separated from him and he becomes a suitor among suitors. The testimony of women is not valid in divorce. The one who divorces according to the Sunnah owes the woman maintenance and housing as long as she is in her waiting period, and they inherit from each other until the waiting period ends.

أقول: قوله: هدم الطلاق الأوّل إما مخصوص بالتطليقتين الأوّلتين دون الثلاثة، أو المراد به: هدم تأثير الطلاق في تحريم التاسعة : لما مضى، ويأتي، على أنه يحتمل كونه، من كلام الصدوق، لا من الحديث، فلا حجة فيه.

I (Hurr Amili) say: His statement "demolishes the first divorce" is either specific to the first two divorces excluding the third, or what is meant by it is demolishing the effect of divorce in prohibiting the ninth, as has been mentioned and will come. It is possible that this is from the words of al-Saduq, not from the hadith, so there is no proof in it.

Hadith 28140

عن علي بن أبي حمزة، قال: قال أبو عبدالله (عليه السلام): لا طلاق إلا على السنة إنّ عبدالله بن عمر طلق امرأته ثلاثا في مجلس واحد وامرأته حائض، فردّ رسول الله (صلى الله عليه وآله) طلاقه، وقال: من خالف كتاب الله رد إلى كتاب الله.

From Ali ibn Abi Hamza, he said: Abu Abdullah (peace be upon him) said: There is no divorce except according to the Sunnah. Indeed, Abdullah ibn Umar divorced his wife three times in one sitting while his wife was menstruating, so the Messenger of Allah (peace and blessings be upon him and his family) rejected his divorce and said: Whoever violates the Book of Allah shall be returned to the Book of Allah.

أقول: وتقدم ما يدل على أكثر الاحكام المذكورة، ويأتي ما يدل عليها، وقد عرفت أن طلاق السنة له معنيان: أعمّ، وأخصّ.

I (Hurr Amili) say: What has preceded indicates most of the mentioned rulings, and what follows will indicate them as well. You have learned that divorce according to the Sunnah has two meanings: a more general one and a more specific one.

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CHAPTER 2

Manner Of Divorce During The Waiting Period And Some Of Its Rulings

[Hadith 28141 to 28142]

Hadith 28141

عن زرارة، عن أبي جعفر (عليه السلام) ـ في حديث ـ قال: وأما طلاق العدة الذي قال الله عزّ وجلّ: (فطلقوهن لعدتهن وأحصوا العدة) فاذا أراد الرجل منكم أن يطلق امرأته طلاق العدة فلينتظر بها حتى تحيض وتخرج من حيضها، ثمّ يطلقها تطليقة من غير جماع بشهادة شاهدين عدلين،

From Zurarah, from Abu Ja'far (peace be upon him) - in a hadith - he said: As for the divorce of the waiting period which Allah, the Mighty and Majestic, said: "So divorce them for their waiting period and count the waiting period" [Quran, 65:1], when a man among you wants to divorce his wife with the divorce of the waiting period, let him wait with her until she menstruates and emerges from her menstruation, then divorce her with one divorce without intercourse, with the testimony of two just witnesses.

ويراجعها من يومه ذلك إن أحب أو بعد ذلك بأيام قبل أن تحيض ويشهد على رجعتها ويواقعها حتى تحيض، فاذا حاضت وخرجت من حيضها طلقها تطليقة اخرى من غير جماع يشهد على ذلك، ثمّ يراجعها أيضا متى شاء قبل أن تحيض، ويشهد على رجعتها ويواقعها، وتكون معه إلى أن تحيض الحيضة الثالثة، فاذا خرجت من حيضتها الثالثة طلقها التطليقة الثالثة بغير جماع ويشهد على ذلك،

He may take her back on that same day if he wishes, or after that by days before she menstruates, and he should have witnesses to his taking her back and have intercourse with her until she menstruates. When she menstruates and emerges from her menstruation, he divorces her with another divorce without intercourse, having witnesses to that. Then he takes her back again whenever he wishes before she menstruates, and has witnesses to his taking her back and has intercourse with her. She remains with him until she menstruates the third menstruation. When she emerges from her third menstruation, he divorces her with the third divorce without intercourse, having witnesses to that.

فاذا فعل ذلك فقد بانت منه، ولا تحل له حتى تنكح زوجا غيره،

When he does this, she is irrevocably separated from him and is not lawful for him until she marries another husband.

قيل له: وإن كانت ممن لا تحيض؟ فقال: مثل هذه، تطلق طلاق السنة.

It was said to him: What if she is one who does not menstruate? He said: Such a woman is divorced according to the divorce of the Sunnah.

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Hadith 28142

عن أبي بصير، عن أبي عبدالله (عليه السلام) ـ في حديث ـ قال: وأما طلاق الرجعة فأن يدعها حتى تحيض وتطهر، ثمّ يطلقها بشهادة شاهدين، ثمّ يراجعها ويواقعها، ثمّ ينتظر بها الطهر فاذا حاضت وطهرت أشهد شاهدين على تطليقة أُخرى، ثمّ يراجعها ويواقعها، ثمّ ينتظر بها الطهر، فاذا حاضت وطهرت أشهد شاهدين على التطليقة الثالثة، ثمّ لا تحل له أبدا حتى تنكح زوجا غيره، وعليها أن تعتد ثلاثة قروء من يوم طلقها التطليقة الثالثة،

From Abu Basir, from Abu Abdullah (peace be upon him) - in a hadith - he said: As for revocable divorce, it is that he leaves her until she menstruates and becomes pure, then divorces her with the testimony of two witnesses, then takes her back and has intercourse with her. Then he waits with her for purity, and when she menstruates and becomes pure, he has two witnesses testify to another divorce, then takes her back and has intercourse with her. Then he waits with her for purity, and when she menstruates and becomes pure, he has two witnesses testify to the third divorce. Then she is never lawful for him until she marries another husband, and she must observe a waiting period of three menstrual cycles from the day he divorced her with the third divorce.

فان طلقها واحدة بشهود على طهر، ثمّ انتظر بها حتى تحيض وتطهر، ثمّ طلقها قبل أن يراجعها لم يكن طلاقه الثانية طلاقا ؛ لانه طلق طالقاً، لأنه إذا كانت المرأة مطلقة من زوجها كانت خارجة من ملكه حتى يراجعها، فاذا راجعها صارت في ملكه ما لم يطلقها التطليقة الثالثة، فاذا طلقها التطليقة الثالثة فقد خرج ملك الرجعة من يده،

If he divorces her once with witnesses during purity, then waits with her until she menstruates and becomes pure, then divorces her before taking her back, his second divorce is not a divorce, because he divorced one already divorced. For when a woman is divorced from her husband, she is outside his ownership until he takes her back. When he takes her back, she becomes in his ownership as long as he does not divorce her with the third divorce. When he divorces her with the third divorce, the right of return goes out of his hand.

فان طلقها على طهر بشهود ثمّ راجعها وانتظر بها الطهر من غير مواقعة فحاضت وطهرت، ثمّ طلقها قبل أن يدنسها بمواقعة بعد الرجعة لم يكن طلاقه لها طلاقا ؛ لانه طلقها التطليقة الثانية في طهر الأوّلى، ولا ينقضي الطهر إلاّ بمواقعة بعد الرجعة، وكذلك لاتكون التطليقة الثالثة إلا بمراجعة ومواقعة بعد الرجعة، ثمّ حيض وطهر بعد الحيض، ثمّ طلاق بشهود حتى يكون لكل تطليقة طهر من تدنيس المواقعة بشهود.

If he divorces her during purity with witnesses, then takes her back and waits with her for purity without intercourse, and she menstruates and becomes pure, then he divorces her before defiling her with intercourse after the return, his divorce of her is not a divorce, because he divorced her with the second divorce during the purity of the first, and the purity period is not completed except by intercourse after the return. Likewise, the third divorce is only valid with a return and intercourse after the return, then menstruation and purity after menstruation, then divorce with witnesses, so that each divorce has its own purity from the defilement of intercourse with witnesses.

ورواه علي بن إبراهيم في (تفسيره) ـ كما مرّ ـ نحوه، وزاد في أثنائه: وهما يتوارثان ما دامت في العدة. ورواه الشيخ بإسناده، عن محمّد بن يعقوب. وكذا الذي قبله. أقول: وتقدم ما يدل على بعض المقصود، ويأتي ما يدل عليه، واشتراط المواقعة يأتي

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وجهه.

Ali ibn Ibrahim narrated it in his commentary - as mentioned previously - similarly, and added in the middle: They inherit from each other as long as she is in the waiting period. The Shaykh narrated it through his chain from Muhammad ibn Ya'qub, as well as the one before it. I (Hurr Amili) say: What indicates some of the intended meaning has been mentioned previously, and what indicates it will come, and the requirement of intercourse will be explained later.

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CHAPTER 3

The Ruling That Whoever Divorces His Wife Three Times According To The Sunnah, She Becomes Forbidden To Him Until She Marries Another Husband, And Likewise Every Woman Who Is Divorced Three Times, And That The Completion Of The Waiting Period Does Not Nullify The Prohibition Of The Third Divorce Except Through Another Husband, And That She Does Not Become Permanently Forbidden On The Ninth Divorce

[Hadith 28143 to 28158]

Hadith 28143

عن محمّد بن إسماعيل، عن الرضا (عليه السلام)، قال: البكر إذا طلقت ثلاث مرات وتزوجت من غير نكاح فقد بانت منه، ولا تحلُّ لزوجها حتى تنكح زوجا غيره.

From Muhammad ibn Ismail, from al-Rida (peace be upon him), he said: If a virgin is divorced three times and marries without consummation, she has become irrevocably separated from him, and she does not become lawful for her husband until she marries another husband.

Hadith 28144

عن طربال، قال: سألت أبا عبدالله (عليه السلام): عن رجل طلق امرأته تطليقة قبل أن يدخل بها، وأشهد على ذلك وأعلمها، قال: قد بانت منه ساعة طلّقها، وهو خاطب من الخطاب.

From Turbal, he said: I asked Abu Abdullah (peace be upon him) about a man who divorced his wife once before consummating the marriage with her, and he had witnesses to this and informed her. He said: She became irrevocably separated from him the moment he divorced her, and he is like any other suitor among the suitors.

قلت: فإن تزوّجها، ثمّ طلقها تطليقة اخرى قبل أن يدخل بها؟ قال: قد بانت منه ساعة طلّقها.

I said: What if he marries her, then divorces her with another divorce before consummating the marriage with her? He said: She became irrevocably separated from him the moment he divorced her.

قلت: فان تزوجها من ساعته أيضاً، ثمّ طلقها تطليقة؟ قال: قد بانت منه، ولا تحل له حتى تنكح زوجا غيره.

I said: What if he marries her again immediately, then divorces her with one divorce? He said: She has become irrevocably separated from him, and she does not become lawful for him until she marries another husband.

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Hadith 28145

عن عبدالله بن سنان، عن أبي عبدالله (عليه السلام) في امرأة طلقها زوجها ثلاثا قبل أن يدخل بها، قال: لا تحل له حتى تنكح زوجا غيره.

From Abdullah ibn Sinan, from Abu Abdullah (peace be upon him) regarding a woman whose husband divorced her three times before consummating the marriage with her. He said: She does not become lawful for him until she marries another husband.

Hadith 28146

عن الحلبي، عن أبي عبدالله (عليه السلام) في رجل طلق امرأته، ثمّ تركها حتى انقضت عدتها، ثمّ تزوجها، ثمّ طلقها من غير أن يدخل بها حتى فعل ذلك بها ثلاثا، قال: لا تحل له حتى تنكح زوجا غيره.

From al-Halabi, from Abu Abdullah (peace be upon him) regarding a man who divorced his wife, then left her until her waiting period ended, then married her, then divorced her without consummating the marriage with her, until he did this to her three times. He said: She does not become lawful for him until she marries another husband.

Hadith 28147

عن إسحاق ابن عمار، قال: قلت لابي إبراهيم (عليه السلام): الحامل يطلقها زوجها، ثمّ يراجعها، (ثمّ يطلّقها، ثمّ يراجعها)، ثمّ يطلقها الثالثة، قال: تبين منه، ولا تحل له حتى تنكح زوجا غيره.

From Ishaq ibn Ammar, he said: I said to Abu Ibrahim (peace be upon him): A pregnant woman whose husband divorces her, then takes her back, then divorces her, then takes her back, then divorces her the third time. He said: She becomes separated from him, and does not become lawful for him until she marries another husband.

Hadith 28148

عن أحمد بن محمّد، عن أبي الحسن (عليه السلام)، قال: سأله رجل ـ وأنا حاضر ـ عن رجل طلق امرأته ثلاثا في مجلس واحد، قال: فقال أبو الحسن (عليه السلام): من طلق امرأته ثلاثا للسنة فقد بانت منه، قال: ثمّ التفت إلي، فقال: فلان لا يحسن أن يقول مثل هذا.

From Ahmad ibn Muhammad, from Abu al-Hasan (peace be upon him), he said: A man asked him - while I was present - about a man who divorced his wife three times in one sitting. Abu al-Hasan (peace be upon him) said: Whoever divorces his wife three times according to the Sunnah, she becomes irrevocably separated from him. Then he turned to me and said: So-and-so does not know how to say such a thing properly.

Hadith 28149

عن زرارة سمعه من أبي جعفر، ومن ابنه (عليهما السلام) بصفة ما قالوا، وإن لم أحفظ حروفه، غير أنه لم يسقط عني جمل معناه: أن الطلاق الذي أمر الله به في كتابه وسنة نبيه (صلى الله عليه وآله)، انه إذا حاضت المرأة، وطهرت من حيضها، أشهد رجلين عدلين قبل أن يجامعها على تطليقة.

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From Zurarah, who heard from Abu Ja'far and from his son (peace be upon both of them) in the manner they spoke, though I do not recall the exact wording, but the general meaning did not escape me: that the divorce which Allah commanded in His book and the Sunnah of His Prophet (peace and blessings be upon him and his family) is that when a woman menstruates and becomes pure from her menstruation, two just men should witness before he has intercourse with her regarding one divorce.

ثمّ هو أحق برجعتها ما لم تمض لها ثلاثة قروء، فان راجعها كانت عنده على تطليقتين، وإن مضت ثلاثة قروء قبل أن يراجعها فهي أملك بنفسها، فان أراد أن يخطبها مع الخطاب خطبها، فان تزوجها كانت عنده على تطليقتين، وما خلا هذا فليس بطلاق.

Then he has more right to take her back as long as three menstrual periods have not passed for her. If he takes her back, she remains with him having had two divorces. If three menstrual periods pass before he takes her back, then she has control over herself. If he wants to propose to her among other suitors, he may propose to her. If he marries her, she would be with him having had two divorces. Whatever is other than this is not divorce.

Hadith 28150

عن عبدالله بن سنان، عن أبي عبدالله (عليه السلام)، قال: قال أمير المؤمنين (عليه السلام): إذا أراد الرجل الطلاق طلقها (في قبل عدتها) عدّتها من غير جماع، فانه إذا طلقها واحدة، ثمّ تركها حتى يخلو أجلها أو بعده، فهي عنده على تطليقة.

From Abdullah ibn Sinan, from Abu Abdullah (peace be upon him), he said: Amir al-Muminin (peace be upon him) said: When a man wants to divorce, he should divorce her during her waiting period without intercourse. When he divorces her once, then leaves her until her term expires or after it, she remains with him having had one divorce.

فان طلقها الثانية، وشاء أن يخطبها مع الخطّاب، إن كان تركها حتى خلا أجلها، وإن شاء راجعها قبل أن ينقضي أجلها، فان فعل فهي عنده على تطليقتين،

If he divorces her a second time and wishes to propose to her among other suitors - if he had left her until her term expired - or if he wishes to take her back before her term expires, if he does so, she remains with him having had two divorces.

فان طلقها ثلاثا فلا تحل له حتى تنكح زوجا غيره، وهي ترث، وتورث ما دامت في التطليقتين الأوّلتين.

If he divorces her three times, she does not become lawful for him until she marries another husband. She inherits and is inherited from as long as she remains within the first two divorces.

Hadith 28151

عن زرارة، عن أبي جعفر (عليه السلام) في الرجل يطلق امرأته تطليقة، ثمّ يراجعها بعد انقضاء عدتها: فاذا طلقها الثالثة لم تحل له حتى تنكح زوجا غيره، فاذا تزوجها غيره ولم يدخل بها، وطلقها أو مات عنها لم تحل لزوجها الأوّل حتى يذوق الآخر عسيلتها.

From Zurarah, from Abu Ja'far (peace be upon him) regarding a man who divorces his wife one divorce, then takes her back after the expiry of her waiting period: If he then divorces her a third time, she is not lawful for him until she marries another husband. If another man marries her but

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does not consummate the marriage with her, and he divorces her or dies, she is not lawful for her first husband until the other has tasted her sweetness.

Hadith 28152

عن أبي بصير، عن أبي عبدالله (عليه السلام) في المطلقة التطليقة الثالثة: لا تحل له حتى تنكح زوج غيره، ويذوق عسيلتها.

From Abu Basir, from Abu Abdullah (peace be upon him) regarding the woman divorced with the third divorce: She is not lawful for him until she marries another husband and he tastes her sweetness.

Hadith 28153

عن رفاعة، عن أبي عبدالله (عليه السلام) قال: سألته عن رجل طلق امرأته حتى بانت منه، وانقضت عدتها، ثمّ تزوجت زوجا آخر فطلقها أيضا، ثمّ تزوجت زوجها الأوّل أيهدم ذلك الطلاق الأوّل؟ قال: نعم.

From Rifa'a, from Abu Abdullah (peace be upon him), he said: I asked him about a man who divorced his wife until she was separated from him and her waiting period ended, then she married another husband who also divorced her, then she married her first husband - does this nullify the first divorce? He said: Yes.

قال ابن سماعة: وكان ابن بكير يقول: المطلقة إذا طلقها زوجها، ثمّ تركها حتى تبين ثمّ تزوجها، فانما هي على طلاق مستأنف، قال: وذكر الحسين بن هاشم أنه سأل ابن بكير عنها، فأجابه بهذا الجواب، فقال له: سمعت في هذا شيئا؟ قال: رواية رفاعة، قال: إنّ رفاعة روى: إذا دخل بينهما زوج، فقال: زوج وغير زوج عندي سواء، فقلت: سمعت في هذا شيئا؟ قال: لا، هذا مما رزق الله من الرأي.

Ibn Sama'a said: Ibn Bukayr used to say: When a divorced woman is divorced by her husband, then he leaves her until she becomes separated, then marries her, she is only upon a new divorce. He said: Al-Husayn ibn Hashim mentioned that he asked Ibn Bukayr about this, and he answered with this response. He said to him: Did you hear something about this? He said: The narration of Rifa'a. He said: Rifa'a narrated that if a husband comes between them. He said: A husband and non-husband are the same to me. I said: Did you hear something about this? He said: No, this is from what Allah has blessed me with of opinion.

قال ابن سماعة: وليس نأخذ بقول ابن بكير، فان الرواية إذا كان بينهما زوج.

Ibn Sama'a said: We do not take the opinion of Ibn Bukayr, for the narration is when there is a husband between them.

Hadith 28154

عن عبدالله بن المغيرة، قال: سألت عبدالله بن بكير عن رجل طلق امرأته واحدة، ثمّ تركها حتى بانت منه، ثمّ تزوجها، قال: هي معه كما كانت في التزويج، قال: قلت: فان رواية رفاعة إذا كان بينهما زوج، فقال لي عبدالله: هذا زوج، وهذا مما رزق الله من الرأي.

From Abdullah ibn al-Mughira, who said: I asked Abdullah ibn Bukayr about a man who divorced

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his wife once, then left her until she was separated from him (through completion of the waiting period), then married her. He said: She is with him as she was in the first marriage. I said: What about the narration of Rifa'a when there was a husband between them? Abdullah said to me: This is a husband, and this is from what Allah has blessed us with in opinion.

Hadith 28155

عن المعلى بن خنيس، عن أبي عبدالله (عليه السلام) في رجل طلق امرأته، ثمّ لم يراجعها حتى حاضت ثلاث حيض، ثمّ تزوّجها، ثمّ طلقها فتركها حتى حاضت ثلاث حيض، ثمّ تزوجها ثمّ طلقها من غير أن يراجع، ثمّ تركها حتى حاضت ثلاث حيض، قال: له أن يتزوجها أبدا ما لم يراجع ويمس. أقول: حمله الشيخ على ما لو تزوجت زوجا غيره ؛ لما مضى ويأتي، ويمكن حمله على إرادة نفي التحريم المؤبد في التاسعة، فانّه إذا طلق للعدة حرمت عليه في التاسعة مؤبّداً، بخلاف طلاق السنة.

From al-Mu'alla ibn Khunis, from Abu Abdullah (peace be upon him) regarding a man who divorced his wife, then did not take her back until she menstruated three times, then married her, then divorced her and left her until she menstruated three times, then married her, then divorced her without taking her back, then left her until she menstruated three times. He said: He may marry her forever as long as he does not take her back and have intercourse. * I (Hurr Amili) say: The Shaykh interpreted this as referring to a case where she married another husband, based on what has passed and what is to come. It is possible to interpret it as intending to negate the permanent prohibition in the ninth (divorce), for when he divorces during the waiting period, she becomes permanently forbidden to him in the ninth divorce, unlike divorce according to the Sunnah.

Hadith 28156

عن الفضل بن شاذان، عن الرضا (عليه السلام) في كتابه إلى المأمون، قال: وإذا طلقت المرأة (بعد العدة ثلاث) مرات، لم تحل لزوجها حتى تنكح زوجا غيره.

From al-Fadl ibn Shadhan, from al-Rida (peace be upon him) in his letter to al-Ma'mun, he said: When a woman is divorced three times after the waiting period, she does not become lawful for her husband until she marries another husband.

Hadith 28157

عن عبدالله بن سنان قال: إذا طلق الرجل امرأته، فليطلق على طهر بغير جماع بشهود، فإن تزوجها بعد ذلك فهي عنده على ثلاث، وبطلت التطليقة الأوّلى، وإن طلقها اثنتين، ثمّ كفّ عنها حتى تمضي الحيضة الثالثة بانت منه بثنتين، وهو خاطب من الخطاب، فإن تزوجها بعد ذلك فهى عنده على ثلاث تطليقات، وبطلت الاثنتان، فان طلقها ثلاث تطليقات على العدّة، لم تحل له حتى تنكح زوجا غيره.

From Abdullah ibn Sinan who said: When a man divorces his wife, let him divorce her during a state of purity without having had intercourse, in the presence of witnesses. If he remarries her after that, she is with him on three (divorces), and the first divorce is nullified. If he divorces her twice, then refrains from her until the third menstrual period passes, she is separated from him by two (divorces), and he is a suitor among suitors. If he marries her after that, she is with him on

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three divorces, and the two (previous divorces) are nullified. If he divorces her three divorces during the waiting period, she is not lawful for him until she marries another husband.

أقول: حمله الشيخ على أنه تزوجها بعد العدّة، وبعد أن تزوجها زوج آخر، ثمّ فارقها لما تقدم، ويحتمل أن يكون الغرض نفي التحريم المؤبد في التاسعة، يعني: أنّ تأثير كل طلقة في تحريم التاسعة مؤبدا يزول باستيفاء العدّة ؛ لما مضى، ويأتي.

I (Hurr Amili) say: The Shaykh interpreted this as him marrying her after the waiting period and after another husband married her and then separated from her, for what was mentioned previously. It is possible that the purpose is to negate the permanent prohibition in the ninth (divorce), meaning that the effect of each divorce in making the ninth permanently prohibited is removed by completing the waiting period, for what has passed and what is to come.

Hadith 28158

عن زرارة بن أعين، عن أبي جعفر (عليه السلام)، قال: سمعته يقول: الطلاق الذي يحبّه الله، والذي يطلق الفقيه، وهو العدل، بين المرأة والرجل أن يطلقها في استقبال الطهر بشهادة شاهدين، وإرادة من القلب، ثمّ يتركها حتى تمضي ثلاثة قروء، فإذا رأت الدم في أول قطرة من الثالثة وهو آخر القروء، لان الاقراء هي الأطهار، فقد بانت منه، وهي أملك بنفسها،

From Zurarah ibn A'yan, from Abu Ja'far (peace be upon him), he said: I heard him say: The divorce that Allah loves, and which the jurist divorces, which is justice between the woman and the man, is that he divorces her at the beginning of purity with the testimony of two witnesses and intention from the heart, then he leaves her until three periods pass. When she sees blood at the first drop of the third, which is the last of the periods - because the periods are the states of purity - she has separated from him and has control over herself.

فإن شاءت تزوجته، وحلّت له بلا زوج، فان فعل هذا بها مائة مرة هدم ما قبله وحلت له بلا زوج، وإن راجعها قبل أن تملك نفسها، ثمّ طلقها ثلاث مرات يراجعها ويطلقها لم تحل له إلا بزوج.

If she wishes, she may marry him, and she becomes lawful to him without another husband. If he does this to her a hundred times, it nullifies what came before and she becomes lawful to him without another husband. But if he takes her back before she gains control of herself, then divorces her three times, taking her back and divorcing her, she is not lawful to him except with another husband.

قال الشيخ: هذه الرواية طريقها ابن بكير، وقد قدّمنا، انّه قال حين سئل عن هذه المسألة: هذا مما رزق الله من الرأي، ولو كان سمع ذلك من زرارة لكان يقول: نعم رواية زرارة. ويجوز أن يكون أسند ذلك إلى زرارة ؛ نصرة لمذهبه لما رأى أصحابه لا يقبلون ما يقوله برأيه، وقد وقع منه من اعتقاد الفطحيّة ما هو أعظم من ذلك. انتهى.

The Shaykh said: This narration's chain includes Ibn Bukayr, and we have previously mentioned that when he was asked about this matter, he said: This is from what Allah granted of opinion. Had he heard this from Zurarah, he would have said: Yes, it is Zurarah's narration. It is possible that he attributed this to Zurarah in support of his school of thought when he saw that his companions would not accept what he said based on his opinion, and there occurred from him regarding the Fathite belief what is greater than that. End quote.

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أقول: يحتمل أن يكون قوله: فان فعل هذا بها مائة مرّة، إلى آخر الحديث، من كلام ابن بكير فتوى منه، فلا حجة فيه إذ ليس من جملة الحديث، كما وقع ذلك من الشيخ والصدوق وغيرهما كثيراً ؛ بقرينة استدلاله بحديث رفاعة، لا بحديث زرارة كما مرّ، وبقرينة رواية الكليني لهذا الحديث بهذا السند بعينه خاليا من الحكم الاخير كما يأتي.

I (Hurr Amili) say: It is possible that his statement "If he does this to her a hundred times" to the end of the hadith is from the words of Ibn Bukayr as his legal opinion, so there is no proof in it since it is not part of the hadith, as occurred frequently from the Shaykh and al-Saduq and others, based on the indication of his using the hadith of Rifa'a as evidence, not the hadith of Zurarah as mentioned previously, and based on the indication of al-Kulayni's narration of this hadith with this exact chain devoid of the final ruling as will come.

ويحتمل أن يكون المراد به: نفي التحريم في التاسعة مؤبدا، ويكون الحكم باباحتها له بلا زوج مخصوصا بالطلاق المتمم للمائة ؛ لانها في الطلاق التاسع والتسعين لا تحل له حتى تنكح زوجا غيره، فيصدق أنّه إذا طلقها مائة مرة حلّت له بلا زوج، يعني: في الطلاق الأخير، وفي أكثر المراتب، لا في كل طلاق.

It is possible that what is meant by it is negating the permanent prohibition in the ninth (divorce), and the ruling of her being lawful to him without another husband is specific to the divorce completing the hundred, because in the ninety-ninth divorce she is not lawful to him until she marries another husband. So it is correct to say that when he divorces her a hundred times, she becomes lawful to him without another husband, meaning in the final divorce and in most instances, not in every divorce.

ويحتمل أن يكون مخصوصا بما عدا الثالثة، يعني: تحلّ له بلا زوج إلا في كل ثالثة، وقد تقدم ما يدل على المقصود في أحاديث طلاق السنة وغير ذلك، ويأتي ما يدل عليه.

It is possible that it is specific to what is other than the third, meaning she becomes lawful to him without another husband except in every third (divorce). What indicates the intended meaning in the hadiths of divorce according to the Sunna and other matters has been mentioned previously, and what indicates it will come.

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CHAPTER 4

The Woman Divorced For The Waiting Period Three Times Is Not Lawful For The Divorcer Until She Marries Another Husband, And She Becomes Permanently Forbidden To Him On The Ninth Time

[Hadith 28159 to 28173]

Hadith 28159

عن أبي بصير، يعني المرادي، قال: قلت لابي عبدالله (عليه السلام): المرأة التي لا تحل لزوجها حتى تنكح زوجا غيره، قال: هي التي تطلق، ثمّ تراجع ثمّ تطلق، ثمّ تراجع، ثمّ تطلق الثالثة، فهي التي لا تحل له حتى تنكح زوجا غيره، ويذوق عسيلتها.

From Abu Basir, meaning al-Muradi, he said: I said to Abu Abdullah (peace be upon him): The woman who is not lawful for her husband until she marries another husband. He said: She is the one who is divorced, then taken back, then divorced, then taken back, then divorced the third time. She is the one who is not lawful for him until she marries another husband and he tastes her sweetness.

Hadith 28160

عن أبي بصير، عن أبي عبدالله (عليه السلام) ـ في حديث ـ قال: سألته عن الذي يطلّق، ثمّ يراجع، ثمّ يطلّق، ثمّ يراجع، ثمّ يطلّق،

From Abu Basir, from Abu Abdullah (peace be upon him) - in a hadith - he said: I asked him about the one who divorces, then takes back, then divorces, then takes back, then divorces.

قال: لا تحل له حتى تنكح زوجا غيره، فيتزوجها رجل آخر، فيطلقها على السنة (ثمّ ترجع إلى زوجها الأوّل، فيطلقها ثلاث مرّات، وتنكح زوجا غيره، فيطلّقها، ثمّ ترجع الى زوجها الأوّل فيطلقها ثلاث مرّات على السنّة، ثمّ تنكح، فتلك التي لا تحل له أبداً، والملاعنة لا تحل له أبداً).

He (the Imam) said: She is not lawful for him until she marries another husband. So another man marries her and divorces her according to the Sunnah, then she returns to her first husband, so he divorces her three times, and she marries another husband who divorces her, then she returns to her first husband and he divorces her three times according to the Sunnah, then she marries - that is the one who is never lawful for him again, and the one who underwent mutual cursing (li'an) is never lawful for him again.

أقول: المراد بالسنّة هنا: معناها الاعم، وهو مخصوص بطلاق العدة بقرينة أوله، وما تقدم.

I (Hurr Amili) say: What is meant by "Sunnah" here is its broader meaning, which is specifically for divorce during the waiting period, as indicated by the context at the beginning and what preceded.

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Hadith 28161

عن أبي بصير، قال: سألت أبا جعفر (عليه السلام) عن الطلاق الذي لا تحل له حتى تنكح زوجا غيره،

From Abu Basir, he said: I asked Abu Ja'far (peace be upon him) about the divorce after which she does not become lawful for him until she marries another husband.

فقال: اخبرك بما صنعت أنا بامرأة كانت عندي، وأردت أن اطلقها،

He (the Imam) said: I will inform you of what I did with a woman who was with me, and I wanted to divorce her.

فتركها حتّى إذا طمثت وطهرت، طلقتها من غير جماع، وأشهدت على ذلك شاهدين، ثمّ تركتها حتى إذا كادت أن تنقضي عدتها راجعتها، ودخلت بها، وتركتها حتى طمثت وطهرت ثمّ طلقتها على طهر من غير جماع بشاهدين، ثمّ تركتها حتى إذا كان قبل أن تنقضي عدتها راجعتها، ودخلت بها، حتى إذا طمثت وطهرت طلقتها على طهر من غير جماع بشهود وإنما فعلت ذلك بها، أنّه لم يكن لي بها حاجة.

I left her until she menstruated and became pure, then I divorced her without intercourse, and I had two witnesses testify to that. Then I left her until her waiting period was about to end, then I took her back and consummated with her. I left her until she menstruated and became pure, then I divorced her during purity without intercourse with two witnesses. Then I left her until just before her waiting period ended, then I took her back and consummated with her. When she menstruated and became pure, I divorced her during purity without intercourse with witnesses. I only did this with her because I had no need for her.

Hadith 28162

عن داود بن سرحان، عن أبي عبدالله (عليه السلام) ـ في حديث ـ قال: والذي يطلق الطلاق الذى لا تحل له، حتى تنكح زوجا غيره ثلاث مرات، وتزوّج ثلاث مرات، لا تحل له أبدا.

From Dawud ibn Sarhan, from Abu Abdullah (peace be upon him) - in a hadith - he said: The one who divorces the divorce after which she does not become lawful for him until she marries another husband three times, and marries three times, she never becomes lawful for him.

Hadith 28163

عن أبي بصير، عن أبي عبدالله (عليه السلام)، قال: قلت له: المرأة التي لا تحل لزوجها، حتّى تنكح زوجا غيره، قال: هي التي تطلّق، ثمّ تراجع ثمّ تطلق، ثمّ تراجع، ثمّ تطلّق، وهي التي لا تحل له حتى تنكح زوجا غيره، وقال: الرجعة بالجماع، وإلاّ فانما هي واحدة.

From Abu Basir, from Abu Abdullah (peace be upon him), he said: I said to him: The woman who does not become lawful for her husband until she marries another husband. He said: She is the one who is divorced, then taken back, then divorced, then taken back, then divorced. She is the one who does not become lawful for him until she marries another husband. He said: The taking back is through intercourse, otherwise it is only one.

أقول: يعني أنها واحدة للعدّة، لا لغيرها كما مضى، ويأتي.

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I (Hurr Amili) say: Meaning that it is one for the waiting period, not for other matters as has passed and will come.

Hadith 28164

عن أبي كهمس، قال: قلت لابي عبدالله (عليه السلام): إن عمي طلق امرأته ثلاثاً، في كل طهر تطليقة، قال: مره، فليراجعها.

قال الشيخ: هذا محمول على أنه طلقها بغير مراجعة ؛ لانّه مع المراجعة يقع الطلاق.

From Abu Kahmas, he said: I said to Abu Abdullah (peace be upon him): My uncle divorced his wife three times, one divorce in each period of purity. He said: Tell him to take her back. The Sheikh said: This is interpreted as meaning he divorced her without taking her back, because with taking her back, the divorce takes effect.

Hadith 28165

عن علي بن الحسن بن علي بن فضال، عن أبيه، قال: سألت الرضا (عليه السلام) عن العلة التي من أجلها لا تحل المطلقة للعدة لزوجها، حتى تنكح زوجا غيره، فقال: إن الله عزّ وجلّ إنما أذن في الطلاق مرتين، فقال: (الطلاق مرتان فامساك بمعروف أو تسريح باحسان) يعني: في التطليقة الثالثة، فلدخوله فيما كره الله عزّ وجلّ من الطلاق الثالث حرمها الله عليه، فلا تحلّ له حتى تنكح زوجا غيره، لئلا يوقع الناس الاستخفاف بالطلاق، ولا يضارّوا النساء.

From Ali ibn al-Hasan ibn Ali ibn Faddal, from his father, he said: I asked al-Rida (peace be upon him) about the reason why a divorced woman during her waiting period is not lawful for her husband until she marries another husband. He said: Indeed Allah, the Mighty and Majestic, only permitted divorce twice, so He said: "Divorce is twice, then either keeping her with kindness or releasing her with good treatment [Quran, 2:229]" - meaning in the third divorce. So for his entering into what Allah, the Mighty and Majestic, dislikes from the third divorce, Allah made her forbidden to him, so she is not lawful for him until she marries another husband, lest people take divorce lightly and harm women.

Hadith 28166

عن محمّد بن سنان، عن الرضا (عليه السلام) فيما كتب إليه في العلل: وعلة الطلاق ثلاثا ؛ لما فيه من المهلة فيما بين الواحدة إلى الثلاث، لرغبة تحدث أو سكون غضبه ان كان، ويكون ذلك تخويفا وتأديبا للنساء، وزجرا لهن عن معصية أزواجهن، فاستحقت المرأة الفرقة والمباينة لدخولها فيما لا ينبغي من معصيه زوجها،

From Muhammad ibn Sinan, from al-Rida (peace be upon him) regarding what he wrote to him about the reasons: The reason for three divorces is because of the respite that is between the first and the third, for desire that may arise or the calming of his anger if there was any, and this serves as a warning and discipline for women, and a deterrent for them from disobeying their husbands. So the woman deserves separation and parting for entering into what is not proper from disobeying her husband.

وعلة تحريم المرأة بعد تسع تطليقات فلا تحلّ له أبداً عقوبة ؛ لئلا يتلاعب بالطلاق، فلا يستضعف المرأة، ويكون ناظراً في اموره، متيقظا معتبراً، وليكون ذلك مؤيسا لهما عن الاجتماع بعد تسع تطليقات.

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The reason for prohibiting the woman after nine divorces so she is never lawful for him again is as punishment, lest he play with divorce and not belittle the woman, and so he may be considerate in his affairs, alert and taking heed, and so that this may cause them both to despair of coming together after nine divorces.

Hadith 28167

وفي (المقنع): قال: سئل الصادق (عليه السلام) عن المرأة الحامل يطلقها زوجها، ثمّ يراجعها، ثمّ يطلّقها، ثمّ يراجعها، ثمّ يطلقها الثالثة، فقال: قد بانت منه ولا تحل له حتى تنكح زوجا غيره.

In al-Muqni: He said: al-Sadiq (peace be upon him) was asked about a pregnant woman whose husband divorces her, then takes her back, then divorces her, then takes her back, then divorces her a third time. He said: She has become permanently separated from him and is not lawful for him until she marries another husband.

Hadith 28168

عن أبي بصير، عن أبي عبدالله (عليه السلام)، قال: المرأة التي لا تحل لزوجها حتى تنكح زوجا غيره التي تطلّق، ثمّ تراجع، ثمّ تطلق ثمّ تراجع، ثمّ تطلّق الثالثة، فلا تحل له حتى تنكح زوجاً غيره، إنّ الله يقول: (الطلاق مرتان فامساك بمعروف أو تسريح باحسان)، والتسريح هو التطليقة الثالثة.

From Abu Basir, from Abu Abdullah (peace be upon him), he said: The woman who is not lawful for her husband until she marries another husband is the one who is divorced, then taken back, then divorced, then taken back, then divorced a third time. She is not lawful for him until she marries another husband. Indeed, Allah says: "Divorce is twice, then either retention in an acceptable manner or release with good treatment [Quran, 2:229]." And the release is the third divorce.

Hadith 28169

وعن ابي عبدالله (عليه السلام) في قوله: (فإن طلقها فلا تحل له من بعد حتى تنكح زوجا غيره) هي هنا التطليقة الثالثة، فإن طلقها الاخير فلا جناح عليهما أن يتراجعا بتزويج جديد.

From Abu Abdullah (peace be upon him) regarding His saying: "So if he has divorced her, then she is not lawful to him afterward until she marries a husband other than him [Quran, 2:230]." This refers to the third divorce. If the latter husband divorces her, then there is no blame upon them if they return to each other through a new marriage.

Hadith 28170

وعن أبي بصير، عن أبي جعفر (عليه السلام) قال: إن الله يقول: (الطلاق مرتان فامساك بمعروف أو تسريح باحسان)، والتسريح بإحسان: هي التطليقة الثالثة.

From Abu Basir, from Abu Ja'far (peace be upon him) who said: Indeed Allah says: "Divorce is twice, then either retention in an acceptable manner or release with good treatment" [Quran,

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2:229], and the release with good treatment is the third divorce.

Hadith 28171

وعن سماعة بن مهران ، قال : سألته عن المرأة التي لا تحل لزوجها حتى تنكح زوجا غيره (1) ، وتذوق عسيلته ، ويذوق عسيلتها ، وهو قول الله عزّ وجلّ : (الطلاق مرتان فامساك بمعروف أو تسريح باحسان) (2) ، قال : التسريح باحسان : التطليقة الثالثة .

From Sama'a ibn Mihran, he said: I asked him about the woman who does not become lawful for her husband until she marries another husband and tastes his sweetness and he tastes her sweetness, and this is the saying of Allah the Mighty and Majestic: Divorce is twice, then either retention in an acceptable manner or release with good treatment [Quran, 2:229]. He said: The release with good treatment is the third divorce.

Hadith 28172

عن عبدالله بن فضالة، عن العبد الصالح (عليه السلام)، قال: سألته عن رجل طلق امرأته عند قرئها تطليقة، ثمّ لم يراجعها، ثمّ طلقها عند قرئها الثالثة، فبانت منه، أله أن يراجعها؟ قال: نعم، قلت: قبل أن تتزوج زوجا غيره؟ قال: نعم، قلت: فرجل طلق امرأته تطليقة، ثمّ راجعها، ثمّ طلّقها، ثمّ راجعها، ثمّ طلّقها، قال: لا تحل له حتى تنكح زوجا غيره.

From Abdullah ibn Fadalah, from the Righteous Servant (peace be upon him), he said: I asked him about a man who divorced his wife during her menstrual period with one divorce, then did not take her back, then divorced her during her third menstrual period, and she became separated from him. Can he take her back? He said: Yes. I said: Before she marries another husband? He said: Yes. I said: What about a man who divorced his wife once, then took her back, then divorced her, then took her back, then divorced her? He said: She is not lawful for him until she marries another husband.

Hadith 28173

عن عمر بن حنظلة، عن أبي عبدالله (عليه السلام)، قال: إذا قال الرجل لامرأته: أنت طالقة، ثمّ راجعها، ثمّ قال: أنت طالقة، ثّم راجعها، ثمّ قال: أنت طالقة، لم تحل له حتى تنكح زوجا غيره. فإن طلّقها، ولم يشهد فهو يتزوجها إذا شاء.

From Umar ibn Hanzala, from Abu Abdullah (peace be upon him), he said: When a man says to his wife: You are divorced, then takes her back, then says: You are divorced, then takes her back, then says: You are divorced, she does not become lawful for him until she marries another husband. But if he divorces her and does not have witnesses, then he may marry her whenever he wishes.

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CHAPTER 5

Recommendation To Choose Divorce According To The Sunnah Over Other Types

[Hadith 28174 to 28176]

Hadith 28174

عن زرارة قال: سمعت أبا جعفر (عليه السلام) يقول: احب للرجل الفقيه إذا أراد أن يطلق امرأته أن يطلقها طلاق السنة، قال: ثمّ قال: وهو الذي قال الله عزّ وجلّ: (لعل الله يحدث بعد ذلك أمرا)، يعني: بعد الطلاق وانقضاء العدة التزويج لهما من قبل أن تزوج زوجا غيره.

From Zurrah who said: I heard Ab Ja'far (peace be upon him) say: I prefer for the jurisprudent man, when he wants to divorce his wife, to divorce her with the divorce of the Sunnah. He said: Then he said: And this is what Allah the Mighty and Majestic said: "Perhaps Allah will bring about after that a new matter," [Quran, 65:1] meaning: after the divorce and the completion of the waiting period, remarriage for both of them before she marries another husband.

قال: وما أعدله وأوسعه لهما جميعا أن يطلقها على طهر من غير جماع تطليقة بشهود، ثمّ يدعها حتى يخلو أجلها ثلاثة أشهر أو ثلاثة قروء، ثمّ يكون خاطبا من الخطاب.

He said: And what is more just and spacious for both of them is that he divorces her during a state of purity without intercourse, one divorce with witnesses, then he leaves her until her term expires - three months or three menstrual periods - then he becomes a suitor among the suitors.

Hadith 28175

عن علي بن جعفر، عن أخيه موسى (عليه السلام)، قال: سألته عن الطلاق ما حدّه؟ وكيف ينبغي للرجل أن يطلق؟ قال: السنة أن يطلق عند الطهر واحدة، ثمّ يدعها حتى تمضي عدتها، فإن بدا له قبل أن تبين أشهد على رجعتها وهي امرأته، وإن تركها حتى تبين فهو خاطب من الخطاب، إن شاءت فعلت، وإن شاءت لم تفعل.

From Ali ibn Ja'far, from his brother Musa (peace be upon him), he said: I asked him about divorce, what is its limit and how should a man divorce? He said: The Sunnah is that he divorces once during purity (after menstruation), then he leaves her until her waiting period passes. If he changes his mind before she becomes irrevocably divorced, he should call witnesses to his taking her back and she is his wife. If he leaves her until she becomes irrevocably divorced, then he is a suitor among suitors - if she wishes she may do so, and if she wishes she may not do so.

Hadith 28176

وقد تقدّم حديث زرارة، عن أبي جعفر (عليه السلام)، قال: الطلاق الذي يحبّه الله، والذي يطلق الفقيه وهو العدل بين الرجل والمرأة أن يطلقها في استقبال الطهر بشهادة شاهدين وإرادة من القلب، ثمّ يتركها حتى تمضي ثلاثة قروء.

The hadith of Zurarah has been previously mentioned, from Abu Ja'far (peace be upon him), who

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said: The divorce that Allah loves, and which the jurist divorces with - and it is the just approach between the man and woman - is that he divorces her at the beginning of her purification period with the testimony of two witnesses and with sincere intention from the heart, then he leaves her until three menstrual periods pass.

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CHAPTER 6

The Intermediary Husband (Muhallil) Nullifies One Or Two Divorces Just As He Nullifies Three

[Hadith 28177 to 28190]

Hadith 28177

عن رفاعة، عن أبي عبدالله (عليه السلام)، قال: سألته عن رجل طلق امرأته حتى بانت منه، وانقضت عدتها ثمّ تزوجت زوجا آخر، فطلّقها أيضا، ثمّ تزوجت زوجها الاوّل، أيهدم ذلك الطلاق الأوّل؟ قال: نعم.

From Rifa'ah, from Abu Abdullah (peace be upon him), he said: I asked him about a man who divorced his wife until she became separated from him, and her waiting period ('iddah) expired, then she married another husband who also divorced her, then she married her first husband again. Does this nullify the first divorce? He said: Yes.

Hadith 28178

عن معاوية بن حكيم، قال: روى أصحابنا، عن رفاعة بن موسى: أنّ الزوج يهدم الطلاق الأوّل، فإن تزوجها فهي عنده مستقبلة قال أبو عبدالله (عليه السلام): يهدم الثلاث ولا يهدم الواحدة والثنتين؟ !.

From Mu'awiyah ibn Hakim, he said: Our companions narrated from Rifa'ah ibn Musa that the husband nullifies the first divorce, so if he marries her, she is with him as if starting anew. Abu Abdullah (peace be upon him) said: Does he nullify three divorces but not nullify one or two?!

Hadith 28179

عن عبدالله بن عقيل بن أبي طالب، قال: اختلف رجلان في قضية علي عليه السلام وعمر في امرأة طلقها زوجها تطليقة أو اثنتين، فتزوّجها آخر، فطلقها، أو مات عنها، فلما انقضت عدتها تزوجها الأوّل، فقال عمر: هي على ما بقي من الطلاق، وقال أمير المؤمنين (عليه السلام): سبحان الله يهدم الثلاث، ولا يهدم واحدة.

From Abdullah ibn Aqeel ibn Abi Talib, he said: Two men disagreed about a ruling of Ali (peace be upon him) and Umar regarding a woman whose husband divorced her once or twice, then another man married her and divorced her, or died while married to her. When her waiting period ended, the first husband married her again. Umar said: She remains subject to what remains of the divorce count. Amir al-Muminin (peace be upon him) said: Glory be to Allah! The three divorces are nullified, but one is not nullified?

Hadith 28180

عن رفاعة بن موسى، قال: قلت لابي عبدالله (عليه السلام): رجل طلق امرأته تطليقة واحدة فتبين منه ثمّ يتزوجها آخر، فيطلقها على السنة فتبين منه، ثمّ يتزوجها الاوّل، على كم هي عنده؟

From Rifa'a ibn Musa, he said: I said to Abu Abdullah (peace be upon him): A man divorces his

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wife once and she becomes separate from him, then another man marries her and divorces her according to the Sunnah and she becomes separate from him, then the first man marries her again - what is her status with him?

قال: على غير شيء، ثمّ قال: يا رفاعة ! كيف؟ إذا طلقها ثلاثا، ثمّ تزوّجها ثانية استقبل الطلاق، فإذا طلقها واحدة كانت على اثنتين؟ !.

He (the Imam) said: She has no prior divorce count against her. Then he said: O Rifa'a! How is it that if he divorced her three times, then she married a second husband, the divorce count starts fresh, but if he divorced her once, she would be counted as having two divorces remaining?

Hadith 28181

عن عمار الساباطيّ، قال: سألت أبا عبدالله (عليه السلام) عن رجل طلق امرأته تطليقتين للعدة ثمّ تزوجت متعة، هل تحل لزوجها الأوّل بعد ذلك؟ قال: لا حتى تزوج بتاتا.

From Ammar al-Sabati, he said: I asked Abu Abdullah (peace be upon him) about a man who divorced his wife twice during the waiting period, then she married in temporary marriage - does she become lawful for her first husband after that? He said: No, not until she marries permanently.

Hadith 28182

عن حماد عن الحلبي، قال: سألت أبا عبدالله (عليه السلام) عن رجل طلق امرأته تطليقة واحدة، ثمّ تركها حتى مضت عدتها، فتزوجت زوجا غيره ثمّ مات الرجل أو طلقها فراجعها زوجها الأوّل، قال: هي عنده على تطليقتين باقيتين.

From Hammad from al-Halabi, he said: I asked Abu Abdullah (peace be upon him) about a man who divorced his wife with one divorce, then left her until her waiting period passed, so she married another husband. Then the man died or divorced her, and her first husband took her back. He said: She is with him on two remaining divorces.

Hadith 28183

عن عبدالله بن محمّد، قال: قلت له: روي عن أبي عبدالله (عليه السلام) في الرجل يطلق امرأته على الكتاب والسنّة، فتبين منه بواحدة، وتتزوّج زوجا غيره، فيموت عنها، أو يطلّقها، فترجع إلى زوجها الأوّل، أنّها تكون عنده على تطليقتين، وواحدة قد مضت، فكتب (عليه السلام): صدقوا.

From Abdullah ibn Muhammad, he said: I said to him: It is narrated from Abu Abdullah (peace be upon him) regarding a man who divorces his wife according to the Book and the Sunnah, and she becomes separated from him by one divorce, and she marries another husband who dies or divorces her, then she returns to her first husband - that she would be with him on two divorces, with one having already passed. So he wrote (peace be upon him): They spoke truthfully.

Hadith 28184

وروى بعضهم: أنها تكون عنده على ثلاث مستقبلات، وأن تلك التي طلقت ليست بشيء ؛ لأنها قد تزوجت زوجا غيره، فوقّع (عليه السلام) بخطه: لا.

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Some of them narrated that she would be with him on three new divorces, and that the divorce which occurred is nothing, because she had married another husband. So he signed (peace be upon him) with his handwriting: No.

Hadith 28185

عن صفوان، عن منصور عن أبي عبدالله (عليه السلام) في امرأة طلقها زوجها واحدة أو اثنتين، ثمّ تركها حتى تمضي عدّتها، فتزوّجها غيره، فيموت أو يطلّقها، فتزوجها الأوّل، قال: هي عنده على ما بقي من الطلاق.

From Safwan, from Mansur, from Abu Abdullah (peace be upon him) regarding a woman whose husband divorced her once or twice, then left her until her waiting period passed, then another man married her, and he either died or divorced her, then the first husband married her again. He said: She is with him according to what remains of the divorce.

Hadith 28186

عن زرارة، عن أبي جعفر (عليه السلام): إن عليا (عليه السلام) كان يقول في الرجل يطلق امرأته تطليقة، ثمّ يتزوجها بعد زوج: إنها عنده على ما بقي من طلاقها.

From Zurarah, from Abu Ja'far (peace be upon him): That Ali (peace be upon him) used to say regarding a man who divorces his wife with one divorce, then marries her after another husband: She is with him according to what remains of her divorce.

قال الشيخ: هذه الروايات تحتمل وجهين: أحدهما: أنه إذا كان الزوج الثاني لم يدخل بها، أو كان تزوّج متعة، أو لم يكن بالغا ؛ لما يأتي. والثاني: أن تكون محمولة على التقيّة ؛ لانّه مذهب عمر، واستدلّ بما مر.

The Shaykh said: These narrations can be interpreted in two ways: First, that the second husband did not consummate the marriage with her, or he married her in temporary marriage, or he was not of age, for reasons that will come. Second, that they should be understood as taqiyya, because this was the position of Umar, and he used as evidence what has passed.

Hadith 28187

عن محمّد بن قيس، عن أبي جعفر (عليه السلام)، قال: سألته عن رجل طلق امرأته تطليقة، ثمّ نكحت بعده رجلا غيره، ثمّ طلّقها، فنكحت زوجها الأوّل، قال: هي عنده على تطليقة.

From Muhammad ibn Qays, from Abu Ja'far (peace be upon him), he said: I asked him about a man who divorced his wife with one divorce, then after him another man married her, then divorced her, then her first husband married her. He said: She is with him on one divorce.

Hadith 28188

وعن ابن أبي عمير، عن رفاعة، عن أبي عبدالله (عليه السلام)، قال: هي عنده على ثلاث.

From Ibn Abi Umair, from Rifa'a, from Abu Abdullah (peace be upon him), he said: She is with him for three (divorces).

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Hadith 28189

عن فضالة، والقاسم ـ جميعا ـ عن رفاعة، عن أبي عبدالله (عليه السلام)، قال: سألته عن المطلقة تبين، ثمّ تزوج زوجا غيره؟ قال: انهدم الطلاق.

From Fadala and al-Qasim - both together - from Rifa'a, from Abu Abdullah (peace be upon him), he said: I asked him about a divorced woman who becomes separated, then marries another husband. He said: The divorce is nullified.

Hadith 28190

عن إسحاق بن جرير، عن أبي عبدالله (عليه السلام)، قال: سأله بعض أصحابنا ـ وأنا حاضر ـ عن رجل طلق امرأته تطليقة واحدة، ثمّ تركها حتى بانت منه، ثمّ تزوجها الزوج الأوّل، قال: فقال: نكاح جديد، وطلاق جديد، وليس التطليقة الأوّلى بشيء، هي عنده على ثلاث تطليقات مستأنفات.

From Ishaq ibn Jarir, from Abu Abdullah (peace be upon him), he said: One of our companions asked him - while I was present - about a man who divorced his wife one divorce, then left her until she became separated from him, then the first husband married her again. He said: It is a new marriage and a new divorce, and the first divorce is nothing. She is with him for three fresh divorces.

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CHAPTER 7

Condition That Consummation Is Required For The One Who Makes Lawful (The Divorced Wife)

[Hadith 28191 to 28194]

Hadith 28191

عن زرارة، عن أبي جعفر (عليه السلام) ـ في حديث ـ قال: فإذا طلقها ثلاثا لم تحل له حتى تنكح زوجا غيره، فإذا تزوجها غيره، ولم يدخل بها، وطلّقها، أو مات عنها، لم تحلّ لزوجها الأوّل، حتّى يذوق الاخر عسيلتها.

From Zurarah, from Abu Ja'far (peace be upon him) - in a hadith - he said: If he divorces her three times, she does not become lawful for him until she marries another husband. If another man marries her but does not consummate the marriage with her, and then divorces her or dies, she does not become lawful for her first husband until the other tastes her honey.

Hadith 28192

عن محمّد بن قيس، قال: سمعت أبا جعفر (عليه السلام) يقول: من طلق امرأته ثلاثاً، ولم يراجع حتى تبين، فلا تحل له حتى تنكح زوجا غيره، فإذا تزوّجت زوجا ودخل بها، حلّت لزوجها الأوّل.

From Muhammad ibn Qays, he said: I heard Abu Ja'far (peace be upon him) say: Whoever divorces his wife three times and does not take her back until she becomes irrevocably separated, she does not become lawful for him until she marries another husband. When she marries another husband and he consummates the marriage with her, she becomes lawful for her first husband.

Hadith 28193

عن سماعة، قال: سألته عن رجل طلّق امرأته، فتزوجها رجل آخر، ولم يصل اليها حتى طلقها، تحل للاول؟ قال: لا، حتى يذوق عسيلتها.

From Sama'a, he said: I asked him about a man who divorced his wife, then another man married her, but he did not reach her (have intercourse with her) until he divorced her - does she become lawful for the first husband? He said: No, not until he tastes her sweetness.

Hadith 28194

عن إسحاق بن جرير، عن أبي عبدالله (عليه السلام) ـ في حديث ـ أنه سئل عن رجل طلق امرأته، فتزوّجها رجل، ولم يدخل بها، ثمّ تزوجها الزوج الأوّل؟ قال: فهي عنده على تطليقة ماضية، وبقيت اثنتان.

From Ishaq ibn Jarir, from Abu Abdullah (peace be upon him) - in a hadith - that he was asked about a man who divorced his wife, then a man married her but did not consummate the marriage with her, then the first husband married her again. He said: She remains with him on the basis of the previous divorce having taken effect, and two divorces remain.

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CHAPTER 8

Maturity (Puberty) Is Required In The One Who Makes Her Lawful

[Hadith 28195 to 28195]

Hadith 28195

عن علي بن الفضل الواسطيّ، قال: كتبت إلى الرضا (عليه السلام): رجل طلق امرأته الطلاق الذي لا تحل له حتى تنكح زوجا غيره، فتزوجها غلام لم يحتلم، قال: لا حتى يبلغ، فكتبت إليه: ما حد البلوغ؟ فقال: ما أوجب الله على المؤمنين الحدود.

From Ali ibn al-Fadl al-Wasiti, he said: I wrote to al-Rida (peace be upon him): A man divorced his wife with the divorce that does not make her lawful for him until she marries another husband, so a boy who has not yet had a nocturnal emission married her. He said: No, not until he reaches maturity. So I wrote to him: What is the limit of maturity? He said: That which makes Allah's prescribed punishments obligatory upon the believers.

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CHAPTER 9

It Is A Condition In The One Who Makes Lawful (The Muhallil) That The Marriage Contract Be Permanent, So She Does Not Become Lawful If He Marries Her In Temporary Marriage (Mut'ah).

[Hadith 28196 to 28200]

Hadith 28196

عن الحسن الصيقل، قال: سألت أبا عبدالله (عليه السلام) عن رجل طلق امرأته ثلاثا، لا تحل له حتى تنكح زوجا غيره وتزوجها رجل متعة، أيحل له أن ينكحها؟ قال: لا، حتّى تدخل في مثل ما خرجت منه.

From al-Hasan al-Sayqal, he said: I asked Abu Abdullah (peace be upon him) about a man who divorced his wife three times - she is not lawful for him until she marries another husband - and a man married her in temporary marriage (mut'ah). Does she become lawful for him to marry? He said: No, until she enters into the same type of marriage that she left.

Hadith 28197

عن محمّد بن مسلم، عن أحدهما (عليهما السلام)، قال: سألته عن رجل طلق امرأته ثلاثاً، ثمّ تمتع فيها رجل آخر، هل تحل للاول؟ قال: لا.

From Muhammad ibn Muslim, from one of them (peace be upon them both), he said: I asked him about a man who divorced his wife three times, then another man had temporary marriage (mut'ah) with her. Does she become lawful for the first husband? He said: No.

Hadith 28198

عن هشام بن سالم، عن أبي عبدالله (عليه السلام) في رجل تزوج امرأة، ثمّ طلقها فبانت، ثمّ تزوجها رجل آخر متعة، هل تحل لزوجها؟ قال: لا، حتى تدخل فيما خرجت منه.

From Hisham ibn Salim, from Abu Abdullah (peace be upon him) regarding a man who married a woman, then divorced her and she became irrevocably separated, then another man married her in temporary marriage (mut'ah) - does she become lawful for her (first) husband? He said: No, not until she enters into what she came out of.

Hadith 28199

عن الحسن الصيقل، عن أبي عبدالله (عليه السلام)، قال: قلت: رجل طلق امرأته طلاقا لا تحل له حتى تنكح زوجا غيره، فتزوّجها رجل متعة، أتحل للاول؟ قال: لا ؛ لأنّ الله يقول: (فان طلقها فلا تحل له من بعد حتى تنكح زوجا غيره فإن طلقها) والمتعة ليس فيها طلاق.

From al-Hasan al-Saiqal, from Abu Abdullah (peace be upon him), he said: I said: A man divorced his wife with a divorce that does not make her lawful for him until she marries another husband, so

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a man married her in temporary marriage - does she become lawful for the first (husband)? He said: No, because Allah says: "If he divorces her, then she is not lawful for him afterward until she marries a husband other than him and he has divorced her [Quran, 2:230]." And temporary marriage does not involve divorce.

Hadith 28200

عن الحلبي، عن أبي عبدالله (عليه السلام) أنه سئل عن الرجل يطلق امرأته على السنة فيتمتع منها رجل، أتحل لزوجها الأوّل؟ قال: لا، حتّى تدخل في مثل الذي خرجت منه.

From al-Halabi, from Abu Abdullah (peace be upon him) that he was asked about a man who divorces his wife according to the Sunnah, then a man enjoys her in temporary marriage - does she become lawful for her first husband? He said: No, not until she enters into the like of what she came out of.

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CHAPTER 10

The Eunuch Does Not Make Lawful The Woman Divorced Three Times

[Hadith 28201 to 28202]

Hadith 28201

عن محمّد بن مضارب، قال: سألت الرضا (عليه السلام) عن الخصي يحلل؟ قال: لا يحلل.

From Muhammad ibn Mudarib, he said: I asked al-Rida (peace be upon him) about the eunuch - does he make lawful? He said: He does not make lawful.

Hadith 28202

عن محمّد بن مضارب، عن الرضا (عليه السلام)، قال: سألته عن الخصي يحل؟ قال: لا يحل.

From Muhammad ibn Mudarib, from al-Rida (peace be upon him), he said: I asked him about the eunuch - does he make lawful? He said: He does not make lawful.

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CHAPTER 11

If A Woman Divorced Three Times Claims She Married And Made Herself Lawful, She Is Believed If She Is Trustworthy With Consideration

[Hadith 28203 to 28203]

Hadith 28203

عن حماد، عن أبي عبدالله (عليه السلام) في رجل طلق امرأته ثلاثا فبانت منه، فأراد مراجعتها، فقال لها: إني اريد مراجعتك، فتزوجي زوجا غيري، فقالت له: قد تزوجت زوجا غيرك، وحلّلت لك نفسي، أيصدّق قولها ويراجعها؟ وكيف يصنع؟ قال: إذا كانت المرأة ثقة صدقت في قولها.

From Hammad, from Abu Abdullah (peace be upon him) regarding a man who divorced his wife three times so she became irrevocably separated from him. He wanted to take her back, so he said to her: I want to take you back, so marry another husband besides me. She said to him: I have already married another husband besides you, and I have made myself lawful for you. Should he believe her statement and take her back? And how should he proceed? He said: If the woman is trustworthy, she is believed in her statement.

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CHAPTER 12

A Slave Can Make Lawful A Woman Divorced Three Times

[Hadith 28204 to 28204]

Hadith 28204

عن إسحاق بن عمّار، قال: سألت أبا عبدالله (عليه السلام) عن رجل طلق امرأته طلاقا لاتحل له حتى تنكح زوجا غيره، فتزوّجها عبد، ثمّ طلّقها، هل يهدم الطلاق؟ قال: نعم ؛ لقول الله عزّ وجلّ في كتابه: (حتى تنكح زوجا غيره)، وقال: هو أحد الازواج.

From Ishaq ibn Ammar, he said: I asked Abu Abdullah (peace be upon him) about a man who divorced his wife with a divorce that does not make her lawful for him until she marries another husband. So a slave married her, then divorced her - does the divorce nullify (the prohibition)? He said: Yes, because of the saying of Allah, the Mighty and Majestic, in His Book: "Until she marries another husband [Quran, 2:230]." And he said: He (the slave) is one of the husbands.

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CHAPTER 13

Recommendation Of Having Witnesses For Taking Back (The Wife) And Its Non-Obligation. If One Forgets Or Neglects (To Have Witnesses), It Is Recommended To Have Witnesses When One Remembers

[Hadith 28205 to 28210]

Hadith 28205

عن محمّد بن مسلم، عن أحدهما (عليهما السلام)، قال: سألته عن رجل طلق امرأته واحدة، قال: هو أملك برجعتها ما لم تنقض العدة، قلت: فإن لم يشهد على رجعتها؟ قال: فليشهد، قلت: فإن غفل عن ذلك؟ قال: فليشهد حين يذكر، وإنّما جعل ذلك لمكان الميراث.

From Muhammad ibn Muslim, from one of them (peace be upon them both), he said: I asked him about a man who divorced his wife once. He said: He has more right to take her back as long as the waiting period has not ended. I said: What if he did not have witnesses for taking her back? He said: Then let him have witnesses. I said: What if he neglected that? He said: Then let him have witnesses when he remembers, and this was only made for the sake of inheritance.

Hadith 28206

عن الحلبي، عن أبي عبدالله (عليه السلام) في الذي يراجع ولم يشهد، قال: يشهد أحب إلي، ولا أرى بالذي صنع بأسا.

From al-Halabi, from Abu Abdullah (peace be upon him) regarding one who takes back (his wife) without having witnesses, he said: Having witnesses is more beloved to me, but I do not see anything wrong with what he did.

Hadith 28207

عن زرارة، ومحمّد بن مسلم، عن أبي جعفر (عليه السلام)، قال: إن الطلاق لا يكون بغير شهود، وإن الرجعة بغير شهود رجعة، ولكن ليشهد بعد، فهو أفضل.

From Zurarah and Muhammad ibn Muslim, from Abu Ja'far (peace be upon him), he said: Divorce cannot occur without witnesses, and taking back (the wife) without witnesses is still a valid taking back, but it is better to have witnesses afterward.

Hadith 28208

وقد تقدم في حديث محمّد بن مسلم، عن أبي جعفر (عليه السلام)، قال: وإن أراد أن يراجعها، أشهد على رجعتها قبل أن تنقضي أقراؤها.

It has been previously mentioned in the hadith of Muhammad ibn Muslim, from Abu Ja'far (peace be upon him), he said: If he wants to take her back, he should have witnesses to his taking her back before her waiting period expires.

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Hadith 28209

عن زرارة، عن أبي جعفر (عليه السلام)، قال: يشهد رجلين إذا طلق وإذا رجع، فإن جهل فغشيها فليشهد الآن على ما صنع، وهي امرأته، وإن كان لم يشهد حين طلق فليس طلاقه بشيء.

From Zurarah, from Abu Ja'far (peace be upon him), he said: He should have two men witness when he divorces and when he takes back (his wife). If he was ignorant and had relations with her, then let him have witnesses now to what he has done, and she is his wife. But if he did not have witnesses when he divorced, then his divorce is nothing.

Hadith 28210

عن محمّد بن مسلم، قال: سئل أبو جعفر (عليه السلام) عن رجل طلق امرأته واحدة، ثمّ راجعها قبل أن تنقضي عدتها ولم يشهد على رجعتها، قال: هي امرأته ما لم تنقض العدّة، وقد كان ينبغي له أن يشهد على رجعتها، فإن جهل ذلك فليشهد حين علم ولا أرى بالذي صنع بأسا وإن كثيرا من الناس لو أرادوا البينة على نكاحهم اليوم، لم يجدوا أحدا يثبت الشهادة على ما كان من أمرهما، ولا أرى بالذي صنع بأساً، وإن يشهد فهو أحسن.

From Muhammad ibn Muslim, who said: Abu Ja'far (peace be upon him) was asked about a man who divorced his wife once, then took her back before her waiting period expired, but did not have witnesses to his taking her back. He said: She is his wife as long as the waiting period has not expired, and it would have been proper for him to have witnesses to his taking her back. If he was ignorant of that, then let him have witnesses when he learns of it, and I do not see any harm in what he did. Even if many people today wanted proof of their marriage, they would not find anyone to establish testimony about what transpired between them. I do not see any harm in what he did, though having witnesses is better.

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CHAPTER 14

Denying Divorce During The Waiting Period (Iddah) Constitutes A Return (Raj'a), But Not After It. If The Spouses Disagree, The One Who Denies Takes An Oath, When The Denial Occurs During The Waiting Period

[Hadith 28211 to 28211]

Hadith 28211

عن ابن محبوب عن أبي ولاد الحناط، عن أبي عبدالله (عليه السلام)، قال: سألته عن امرأة ادعت على زوجها أنه طلقها تطليقة طلاق العدة طلاقا صحيحا ـ يعني: على طهر من غير جماع ـ وأشهد لها شهودا على ذلك، ثمّ أنكر الزوج بعد ذلك،

From Ibn Mahbub, from Abu Wallad al-Hannat, from Abu Abdullah (peace be upon him), he said: I asked him about a woman who claimed against her husband that he had divorced her one divorce - a divorce of the waiting period, a valid divorce - meaning: during a state of purity without sexual intercourse - and she brought witnesses to testify to that. Then the husband denied it after that.

فقال: إن كان إنكار الطلاق قبل انقضاء العدّة، فإن إنكاره الطلاق رجعة لها، وإن كان أنكر الطلاق بعد انقضاء العدّة، فإن على الامام أن يفرق بينهما بعد شهادة الشهود، بعد أن تستحلف أن إنكاره للطلاق بعد انقضاء العدّة، وهو خاطب من الخطاب.

He (the Imam) said: If the denial of the divorce was before the expiration of the waiting period, then his denial of the divorce constitutes a return (raj'a) for her. But if he denied the divorce after the expiration of the waiting period, then it is upon the Imam to separate between them after the testimony of the witnesses, after she takes an oath that his denial of the divorce was after the expiration of the waiting period, and he is a suitor among suitors.

أقول: طلاق العدة هنا مستعمل بالمعنى الأعمّ، لا المقابل لطلاق السنّة، وهو ظاهر.

I (Hurr Amili) say: The divorce of the waiting period here is used in the broader sense, not in opposition to the divorce of the Sunna, and this is apparent.

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CHAPTER 15

Ruling On What Happens If The Husband Claims After The Waiting Period, Or After She Has Remarried, That He Took Her Back During It, And The Ruling On One Who Keeps The Revocation Secret And Does Not Inform The Wife, And One Who Keeps The Divorce Secret, Then Claims It

[Hadith 28212 to 28216]

Hadith 28212

عن المرزبان، قال: سألت أبا الحسن الرضا (عليه السلام) عن رجل قال لامرأته: اعتدّي، فقد خليت سبيلك، ثمّ أشهد على رجعتها بعد ذلك بأيّام، ثمّ غاب عنها قبل أن يجامعها حتى مضت لذلك أشهر بعد العدة أو أكثر، فكيف تأمره؟ فقال: إذا أشهد على رجعته فهي زوجته.

From al-Mirzaban, who said: I asked Abu al-Hasan al-Rida (peace be upon him) about a man who said to his wife: "Observe your waiting period, for I have freed you," then he called witnesses to his taking her back after that by some days, then he was absent from her before he had intercourse with her until months had passed after the waiting period or more. How do you command him? He said: If he called witnesses to his revocation, then she is his wife.

Hadith 28213

عن محمّد بن قيس، عن أبي جعفر (عليه السلام)، انه قال في رجل طلق امرأته، وأشهد شاهدين، ثمّ أشهد على رجعتها سرّاً منها، واستكتم ذلك الشهود، فلم تعلم المرأة بالرجعة حتى انقضت عدّتها، قال: تخير المرأة فإن شاءت زوجها وإن شاءت غير ذلك وإن تزوجت قبل أن تعلم بالرجعة التي أشهد عليها زوجها، فليس للذي طلقها عليها سبيل، وزوجها الاخير أحق بها.

From Muhammad ibn Qays, from Abu Ja'far (peace be upon him), that he said regarding a man who divorced his wife and called two witnesses, then called witnesses to his taking her back secretly from her, and asked those witnesses to keep it secret, so the woman did not know about the revocation until her waiting period had ended. He said: The woman has a choice - if she wishes her husband, and if she wishes otherwise. And if she married before she knew about the revocation that her husband had witnesses to, then the one who divorced her has no way to her, and her latter husband has more right to her.

Hadith 28214

عن الحسن بن صالح، قال: سألت جعفر بن محمّد (عليه السلام)، عن رجل طلق امرأته، وهو غائب في بلدة اُخرى، وأشهد على طلاقها رجلين، ثمّ إنه راجعها قبل انقضاء العدّة، ولم يشهد على الرجعة، ثمّ إنه قدم عليها بعد انقضاء العدّة، وقد تزوّجت، فأرسل إليها: أني قد كنت راجعتك قبل انقضاء العدّة، ولم أشهد،

From al-Hasan ibn Salih, who said: I asked Ja'far ibn Muhammad (peace be upon him) about a man who divorced his wife while he was absent in another city, and he had two men witness his divorce

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of her. Then he took her back before the completion of the waiting period ('iddah), but did not have witnesses for the taking back (raj'ah). Then he came to her after the completion of the waiting period, and she had married [someone else]. So he sent to her: "I had taken you back before the completion of the waiting period, but I did not have witnesses."

فقال: لا سبيل له عليها ؛ لانه قد أقر بالطلاق، وادعى الرجعة بغير بينة فلا سبيل له عليها، ولذلك ينبغي لمن طلق أن يشهد، ولمن راجع أن يشهد على الرجعة كما أشهد على الطلاق، وإن كان أدركها قبل أن تزوّج، كان خاطبا من الخطاب.

He said: He has no claim over her, because he has acknowledged the divorce and claimed the taking back without evidence, so he has no claim over her. For this reason, whoever divorces should have witnesses, and whoever takes back should have witnesses for the taking back just as he had witnesses for the divorce. If he had reached her before she married, he would have been a suitor among the suitors.

Hadith 28215

عن سليمان بن خالد قال: سألت أبا عبدالله (عليه السلام) عن رجل طلق امرأته وهو غائب، وأشهد على طلاقها، ثمّ قدم فأقام مع المرأة أشهرا لم يعلمها بطلاقها ثمّ إن المرأة ادعت الحبل، فقال الرجل: قد طلّقتك، وأشهدت على طلاقك. قال: يلزم الولد، ولا يقبل قوله.

From Sulayman ibn Khalid who said: I asked Abu Abdullah (peace be upon him) about a man who divorced his wife while he was absent and had witnesses for her divorce. Then he returned and lived with the woman for months without informing her of her divorce. Then the woman claimed pregnancy, so the man said: "I divorced you and had witnesses for your divorce." He said: The child is his responsibility, and his statement is not accepted.

Hadith 28216

عن زيد بن علي، عن آبائه، عن علي (عليهم السلام) في رجل أظهر طلاق امرأته، وأشهد عليه، وأسر رجعتها، ثمّ خرج، فلما رجع وجدها قد تزوجت، قال: لا حقّ له عليها ؛ من أجل أنّه أسرّ رجعتها، وأظهر طلاقها.

From Zayd ibn Ali, from his forefathers, from Ali (peace be upon them) regarding a man who publicly announced the divorce of his wife and had witnesses for it, but kept his taking her back secret. Then he left, and when he returned he found that she had married [someone else]. He said: He has no right over her because he kept his taking back secret while he made his divorce public.

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CHAPTER 16

That Whoever Divorces During The Waiting Period Without Taking Back His Wife, His Divorce Does Not Take Effect. If He Takes Her Back, Then Divorces, It Is Valid, And She Observes The Waiting Period For The Latter Divorce.

[Hadith 28217 to 28220]

Hadith 28217

عن بكير، قال: سمعت أبا جعفر (عليه السلام) يقول: إذا طلق الرجل امرأته، وأشهد شاهدين عدلين في قبل عدتها فليس له أن يطلقها حتى تنقضي عدتها، إلاّ أن يراجعها.

From Bukayr, he said: I heard Abu Ja'far (peace be upon him) saying: When a man divorces his wife and has two just witnesses testify during her waiting period, he cannot divorce her until her waiting period expires, unless he takes her back.

Hadith 28218

عن زرارة، عن أحدهما (عليهما السلام) في الرجل يطلق امرأته تطليقة، ثمّ يدعها حتى تمضي ثلاثة أشهر إلا يوما، ثمّ يراجعها في مجلس، ثمّ يطلّقها، ثمّ فعل ذلك في آخر الثلاثة أشهر أيضاً، قال: فقال: إذا أدخل الرجعة اعتدت بالتطليقة الاخيرة، وإذا طلق بغير رجعة لم يكن له طلاق.

From Zurarah, from one of them (peace be upon them both) regarding a man who divorces his wife one divorce, then leaves her until three months pass except one day, then takes her back in a sitting, then divorces her, then does the same thing at the end of the three months as well. He said: When the man implements the taking back, she observes the waiting period for the last divorce, and when he divorces without taking back, he has no right to divorce.

Hadith 28219

عن أبي بصير، عن أبي عبدالله (عليه السلام) ـ في حديث ـ قال: وإن طلقها واحدة على طهر بشهود، ثمّ انتظر بها حتى تحيض وتطهر، ثمّ طلقها قبل أن يراجعها لم يكن طلاقه ثانية طلاقا ؛ لانّه طلق طالقا ؛ لانه إذا كانت المرأة مطلقة من زوجها كانت خارجة من ملكه حتى يراجعها، فإذا راجعها صارت في ملكه ما لم يطلقها.

From Abu Basir, from Abu Abdullah (peace be upon him) - in a hadith - he said: If he divorces her once during a state of purity with witnesses, then waits for her until she menstruates and becomes pure, then divorces her before he takes her back, his second divorce would not be a valid divorce, because he divorced one who was already divorced. This is because when a woman is divorced from her husband, she is outside his ownership until he takes her back. When he takes her back, she returns to his ownership as long as he has not divorced her.

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Hadith 28220

عن محمّد بن مسلم، عن أبي جعفر (عليه السلام)، قال: سألته عن رجل طلق امرأته تطليقة على طهر ثمّ أمسكها في منزله حتى حاضت حيضتين وطهرت، ثمّ طلقها تطليقتين على طهر، فقال: هذه إذا حاضت ثلاث حيض من يوم طلقها التطليقة الأوّلى، فقد حلت للرجال، ولكن كيف أصنع، أو أقول هذا وفي كتاب علي (عليه السلام):

From Muhammad ibn Muslim, from Abu Ja'far (peace be upon him), he said: I asked him about a man who divorced his wife once during purity, then kept her in his house until she menstruated twice and became pure, then divorced her twice during purity. He said: When she has menstruated three times from the day he divorced her the first divorce, she becomes lawful for other men. But how can I do this or say this when in the book of Ali (peace be upon him) it states:

إن امرأة أتت رسول الله (صلى الله عليه وآله) فقالت: يا رسول الله افتني في نفسي، فقال لها: فيما افتيك؟ قالت: إن زوجي طلقني وأنا طاهر، ثمّ أمسكني لا يمسّني، حتّى إذا طمثت وطهرت طلقني تطليقة اخرى، ثمّ أمسكني لا يمسّني، إلاّ أنه يسخدمني، ويرى شعري ونحري وجسدي، حتى إذا طمثت وطهرت الثالثة طلقني التطليقة الثالثة، قال: فقال لها رسول الله (صلى الله عليه وآله): أيتها المرأة لا تتزوجي حتى تحيضي ثلاث حيض مستأنفات، فإن الثلاث حيض التي حيضتها وأنت في منزله، إنما حيضتها وأنت في حباله.

A woman came to the Messenger of Allah (peace be upon him and his family) and said: O Messenger of Allah, give me a ruling regarding myself. He said to her: Regarding what should I give you a ruling? She said: My husband divorced me while I was pure, then kept me without touching me. When I menstruated and became pure, he divorced me another divorce, then kept me without touching me, except that he makes me serve him and sees my hair, neck, and body. When I menstruated and became pure the third time, he divorced me the third divorce. The Messenger of Allah (peace be upon him and his family) said to her: O woman, do not marry until you menstruate three fresh menstrual cycles, for the three menstrual cycles you experienced while in his house were only experienced while you were in his bonds.

أقول: ذكر الشيخ: أنه محمول على كونه راجع، ثمّ طلق، أو على التقية لان العامة يجيزون الثلاث بغير رجعة، وتقدم ما يدل على ذلك، ويأتي ما يدل عليه.

I (Hurr Amili) say: The Sheikh mentioned that this is interpreted as him having taken her back then divorced her, or it is based on taqiyyah because the Aammah (Sunnis) permit three divorces without taking back, and what indicates this has been mentioned before, and what indicates it will come.

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CHAPTER 17

The One Who Takes Back His Wife Then Divorces Her Before Intercourse, It Does Not Count Toward The Waiting Period

[Hadith 28221 to 28225]

Hadith 28221

عن أبي بصير، عن أبي عبدالله (عليه السلام)، قال: المراجعة في الجماع، وإلاّ فإنّما هي واحدة.

From Abu Basir, from Abu Abdullah (peace be upon him), he said: Taking back (the wife) is through intercourse, otherwise it is only one (divorce).

Hadith 28222

عن الفضل بن شاذان ـ جميعا ـ عن ابن أبي عمير، عن عبد الرحمن بن الحجّاج، قال: قال أبو عبدالله (عليه السلام) في الرجل يطلق امرأته له أن يراجع، وقال: لا يطلق التطليقة الاخرى حتى يمسها.

From al-Fadl ibn Shadhan - all together - from Ibn Abi Umayr, from Abd al-Rahman ibn al-Hajjaj, he said: Abu Abdullah (peace be upon him) said regarding the man who divorces his wife that he has the right to take her back, and he said: He cannot give the other divorce until he touches her.

Hadith 28223

عن إسحاق بن عمار، عن أبي ابراهيم (عليه السلام)، قال: سألته عن الرجل يطلق امرأته في طهر من غير جماع، ثمّ يراجعها في يومه ذلك، ثمّ يطلقها تبين منه بثلاث تطليقات في طهر واحد، فقال: خالف السنة، قلت فليس ينبغي له إذا هو راجعها أن يطلقها إلا في طهر، قال: نعم، قلت: حتى يجامع؟ قال: نعم.

From Ishaq ibn Ammar, from Abu Ibrahim (peace be upon him), he said: I asked him about a man who divorces his wife during a period of purity without intercourse, then takes her back on that same day, then divorces her such that she becomes separated from him with three divorces in one period of purity. He said: He has opposed the Sunnah. I said: So it is not proper for him when he takes her back to divorce her except during a period of purity? He said: Yes. I said: Until he has intercourse? He said: Yes.

Hadith 28224

عن إسحاق بن عمار، عن أبي الحسن (عليه السلام)، قال: الرجعة بالجماع، وإلاّ فإنّما هي واحدة.

From Ishaq ibn Ammar, from Abu al-Hasan (peace be upon him), he said: The taking back is through intercourse, otherwise it is only one.

أقول: المراد أنها واحدة للعدة، وإن كانت التطليقة الثانية صحيحة، لكنها للسنة بالمعنى الاعمّ، كما يظهر من كلام الشيخ، وغيره، ويأتي ما يدل على ذلك.

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I (Hurr Amili) say: What is meant is that it is one for the waiting period, even though the second divorce is valid, but it is according to the Sunnah in the broader sense, as appears from the words of the Shaykh and others, and what indicates this will come.

Hadith 28225

عن شعيب الحداد ـ أظنه ـ عن أبي عبدالله (عليه السلام)، أو عن المعلى بن خنيس، عن أبي عبدالله (عليه السلام) في الرجل يطلق امرأته تطليقة، ثمّ يطلقها الثانية قبل أن يراجع، قال: فقال أبو عبدالله (عليه السلام): لا يقع الطلاق الثاني حتّى يراجع، ويجامع.

From Shu'ayb al-Haddad - I think - from Abu Abdullah (peace be upon him), or from al-Mu'alla ibn Khanees, from Abu Abdullah (peace be upon him) regarding a man who divorces his wife once, then divorces her a second time before he takes her back. He said: Abu Abdullah (peace be upon him) said: The second divorce does not take effect until he takes her back and has intercourse.

أقول: ويأتي ما ظاهره المنافاة، وقد عرفت وجهه.

I (Hurr Amili) say: What appears to contradict this will come, and you have already known its explanation.

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CHAPTER 18

Validity Of Taking Back (One's Wife) Without Sexual Intercourse, Thus Making Intercourse Permissible Even After The Waiting Period

[Hadith 28226 to 28227]

Hadith 28226

عن عبد الحميد الطائي، عن أبي جعفر (عليه السلام)، قال: (قلت له): الرجعة بغير جماع تكون رجعة؟ قال: نعم.

From Abd al-Hamid al-Ta'i, from Abu Ja'far (peace be upon him), he said: I said to him: Does taking back (one's wife) without sexual intercourse constitute a valid taking back? He said: Yes.

Hadith 28227

عن محمّد بن مسلم، عن أبي جعفر (عليه السلام)، قال: سألته عن الرجعة بغير جماع تكون رجعة؟ قال: نعم.

From Muhammad ibn Muslim, from Abu Ja'far (peace be upon him), he said: I asked him about taking back (one's wife) without sexual intercourse - does it constitute a valid taking back? He said: Yes.

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CHAPTER 19

That Whoever Takes Back (His Wife) Then Divorces Without Intercourse, The Divorce Is Valid, But It Does Not Count Toward The Waiting Period

[Hadith 28228 to 28233]

Hadith 28228

عن عبد الحميد بن عوّاض، ومحمّد بن مسلم، قالا: سألنا أبا عبدالله (عليه السلام) عن رجل طلّق امرأته، وأشهد على الرجعة، ولم يجامع ثمّ طلق في طهر آخر على السنّة، أتثبت التطليقة الثانية بغير جماع؟ قال: نعم، إذا هو أشهد على الرجعة، ولم يجامع كانت التطليقة ثابتة.

From Abd al-Hamid ibn Awwad and Muhammad ibn Muslim, they said: We asked Abu Abdullah (peace be upon him) about a man who divorced his wife, testified to the revocation (taking her back), did not have intercourse, then divorced in another period of purity according to the Sunnah - does the second divorce become established without intercourse? He said: Yes, when he testified to the revocation and did not have intercourse, the divorce was established.

Hadith 28229

عن أحمد بن محمّد بن أبي نصر، قال: سألت الرضا (عليه السلام) عن رجل طلق امرأته بشاهدين، ثمّ راجعها، ولم يجامعها بعد الرجعة حتى طهرت من حيضها، ثمّ طلقها على طهر بشاهدين، أيقع عليها التطليقة الثانية، وقد راجعها، ولم يجامعها؟ قال: نعم.

From Ahmad ibn Muhammad ibn Abi Nasr, he said: I asked al-Rida (peace be upon him) about a man who divorced his wife with two witnesses, then took her back, but did not have intercourse with her after the revocation until she became pure from her menstruation, then divorced her during a period of purity with two witnesses - does the second divorce fall upon her even though he took her back but did not have intercourse with her? He said: Yes.

Hadith 28230

عن المعلّى بن خنيس، عن أبي عبدالله (عليه السلام)، قال: الذي يطلّق، ثمّ يراجع، ثمّ يطلق فلا يكون فيما بين الطلاق والطلاق جماع، فتلك تحل له قبل أن تزوج زوجا غيره، والتي لا تحل له حتى تنكح زوجا غيره، هي التي تجامع فيما بين الطلاق والطلاق.

From al-Mu'alla ibn Khanees, from Abu Abdullah (peace be upon him), he said: The one who divorces, then takes back (his wife), then divorces again - if there is no intercourse between the first divorce and the second divorce, then she is lawful for him before she marries another husband. But the one who is not lawful for him until she marries another husband is the one with whom he had intercourse between the first divorce and the second divorce.

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Hadith 28231

عن أبي علي ابن راشد، قال: سألته مشافهة عن رجل طلق امرأته بشاهدين على طهر، ثمّ سافر، وأشهد على رجعتها، فلمّا قدم طلقها من غير جماع، أيجوز ذلك له؟ قال: نعم، قد جاز طلاقها.

From Abu Ali ibn Rashid, he said: I asked him directly about a man who divorced his wife with two witnesses during a period of purity, then traveled and had witnesses to his taking her back. When he returned, he divorced her without intercourse - is this permissible for him? He said: Yes, his divorce of her is valid.

Hadith 28232

عن إسحاق بن عمّار، عن أبي الحسن (عليه السلام)، قال: قلت له: رجل طلق امرأته، ثمّ راجعها بشهود، ثمّ طلّقها، ثمّ بدا له فراجعها بشهود، ثمّ طلقها فراجعها بشهود، تبين منه؟ قال: نعم، قلت: كل ذلك في طهر واحد، قال: تبين منه، قلت: فانه فعل ذلك بامرأة حامل أتبين منه؟ قال: ليس هذا مثل هذا.

From Ishaq ibn Ammar, from Abu al-Hasan (peace be upon him), he said: I said to him: A man divorced his wife, then took her back with witnesses, then divorced her, then changed his mind and took her back with witnesses, then divorced her and took her back with witnesses - is she irrevocably divorced from him? He said: Yes. I said: All of this in one period of purity? He said: She is irrevocably divorced from him. I said: What if he did this with a pregnant woman, is she irrevocably divorced from him? He said: This is not like that.

أقول: حمله الشيخ على أنه لا يجوز طلاق الحامل للسنة مرة ثانية حتى تضع ؛ لما يأتي، وإن كان يجوز للعدة.

I (Hurr Amili) say: The Sheikh interpreted this as meaning that it is not permissible to divorce a pregnant woman according to the Sunnah a second time until she gives birth, as will be mentioned, even though it is permissible for the waiting period.

Hadith 28233

عن أبي كهمس، واسمه هيثمّ بن عبيد، عن رجل، قال: قلت لابي عبدالله (عليه السلام): إن عمي طلق امرأته ثلاثا في كل طهر تطليقة، قال: مره، فليراجعها.

From Abu Kahmas, whose name is Haytham ibn Ubayd, from a man who said: I said to Abu Abdullah (peace be upon him): My uncle divorced his wife three times, one divorce in each period of purity. He said: Tell him to take her back.

أقول: حمله الشيخ على ما لو طلق من غير رجعة ؛ لما مرّ، وتقدم ما ظاهره المنافاة، وقد عرفت وجهه، وعموم أحاديث الطلاق والرجعة دال على المقصود.

I (Hurr Amili) say: The Shaykh interpreted this as applying to a case where the divorce was without revocation, based on what has passed. What has preceded appears to contradict this, but you have learned its interpretation, and the general narrations regarding divorce and revocation indicate the intended meaning.

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CHAPTER 20

Permissibility Of Divorcing A Pregnant Woman A Second And Third Time According To The Waiting Period ('iddah), Not According To The Sunnah, As Long As She Remains Pregnant, And She Becomes Forbidden After The Third Divorce Until She Marries Another Husband

[Hadith 28234 to 28244]

Hadith 28234

عن إسماعيل الجعفي، عن أبي جعفر (عليه السلام)، قال: طلاق الحامل واحدة، فاذا وضعت ما في بطنها فقد بانت منه.

From Isma'il al-Ju'fi, from Abu Ja'far (peace be upon him), who said: The divorce of a pregnant woman is one. When she gives birth to what is in her womb, she becomes separated from him.

Hadith 28235

عن الحلبي، عن أبي عبدالله (عليه السلام)، قال: طلاق الحامل واحدة، وإن شاء راجعها قبل أن تضع، فان وضعت قبل أن يراجعها فقد بانت منه، وهو خاطب من الخطاب.

From al-Halabi, from Abu Abdullah (peace be upon him), who said: The divorce of a pregnant woman is one. If he wishes, he may take her back before she gives birth. If she gives birth before he takes her back, she becomes separated from him, and he is like any other suitor among the suitors.

Hadith 28236

عن الكناني، عن أبي عبدالله (عليه السلام)، قال: طلاق الحامل واحدة، وعدتها أقرب الاجلين.

From al-Kunani, from Abu Abdullah (peace be upon him), he said: The divorce of a pregnant woman is one (divorce), and her waiting period is the nearer of the two terms.

Hadith 28237

عن ابي بصير، عن أبي عبدالله (عليه السلام)، قال: الحبلى تطلق تطليقة واحدة.

From Abu Basir, from Abu Abdullah (peace be upon him), he said: The pregnant woman is divorced with one divorce.

Hadith 28238

عن سماعة بن مهران، قال: سألته عن طلاق الحبلى، فقال: واحدة، وأجلها أن تضع حملها.

From Sama'a ibn Mihran, he said: I asked him about the divorce of a pregnant woman, so he said: One (divorce), and her term is that she gives birth to her child.

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Hadith 28239

عن إسحاق بن عمّار، قال: قلت لابي إبراهيم (عليه السلام): الحامل يطلقها زوجها، ثمّ يراجعها، ثمّ يطلقها، ثمّ يراجعها، ثمّ يطلقها الثالثة، قال: تبين منه، ولا تحل له حتى تنكح زوجا غيره. أقول: حمله الشيخ على طلاق العدّة، وخصّ الاحاديث السابقة بطلاق السنة.

From Ishaq ibn Ammar, he said: I said to Abu Ibrahim (peace be upon him): A pregnant woman whose husband divorces her, then takes her back, then divorces her, then takes her back, then divorces her a third time. He said: She is irrevocably divorced from him, and she is not lawful for him until she marries another husband. I (Hurr Amili) say: The Sheikh interpreted this as referring to divorce during the waiting period (iddah), and specified that the previous hadiths refer to divorce according to the Sunnah.

Hadith 28240

عن محمّد بن منصور الصيقل، عن أبيه، عن أبي عبدالله (عليه السلام) في الرجل يطلق امرأته، وهي حبلى، قال: يطلقها، قلت: فيراجعها؟ قال: نعم يراجعها، قلت: فإنه بدا له بعد ما راجعها أن يطلقها، قال: لا، حتّى تضع. أقول: حمله الشيخ على طلاق السنة.

From Muhammad ibn Mansur al-Saiqal, from his father, from Abu Abdullah (peace be upon him) regarding a man who divorces his wife while she is pregnant. He said: He divorces her. I said: Can he take her back? He said: Yes, he can take her back. I said: If it occurs to him after taking her back that he wants to divorce her. He said: No, not until she gives birth. I (Hurr Amili) say: The Sheikh interpreted this as referring to divorce according to the Sunnah.

Hadith 28241

عن إسحاق بن عمار، عن أبي الحسن الأوّل (عليه السلام)، قال: سألته عن الحبلى تطلق الطلاق الذي لا تحل له حتى تنكح زوجا غيره، قال: نعم، قلت: ألست قلت لي: إذا جامع لم يكن له أن يطلق؟ قال: إن الطلاق لا يكون إلا على طهر قد بان، أو حمل قد بان، وهذه قد بان حملها.

From Ishaq ibn Ammar, from Abu al-Hasan the First (peace be upon him), he said: I asked him about a pregnant woman who is divorced with the divorce that makes her unlawful for him until she marries another husband. He said: Yes. I said: Did you not tell me that if he has intercourse, he cannot divorce? He said: Indeed, divorce can only occur during a state of purity that has become clear, or a pregnancy that has become clear, and this one's pregnancy has become clear.

Hadith 28242

عن الفضل بن محمّد الاشعري، و عبدالله بن بكير، عن بعضهم، قال في الرجل تكون له المرأة الحامل وهو يريد أن يطلقها، قال: يطلقها إذا أراد الطلاق بعينه، يطلقها بشهادة الشهود، فان بدا له في يومه، أو من بعد ذلك أن يراجعها، يريد الرجعة بعينها، فليراجع وليواقع، ثمّ يبدو له فيطلق أيضاً، ثمّ يبدو له فيراجع كما راجع أولا، ثمّ يبدو له فيطلق فهي التي لا تحل له حتى تنكح زوجا غيره، إذا كان إذا راجع يريد المواقعة والامساك، ويواقع.

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From al-Fadl ibn Muhammad al-Ash'ari and Abdullah ibn Bukayr, from some of them, he said regarding a man who has a pregnant wife and wants to divorce her: He divorces her when he wants divorce specifically, he divorces her with the testimony of witnesses. If it occurs to him on that day, or after that, to take her back - he wants reconciliation specifically - then let him take her back and have intercourse with her. Then it occurs to him to divorce again, then it occurs to him to take her back as he took her back the first time, then it occurs to him to divorce her - this is the one who does not become lawful for him until she marries another husband, when he takes her back intending intercourse and retention, and he has intercourse.

Hadith 28243

عن إسحاق بن عمار، عن أبي الحسن (عليه السلام) قال: سألته عن رجل طلق امرأته وهي حامل، ثمّ راجعها ثمّ طلقها، ثمّ راجعها، ثمّ طلقها الثالثة في يوم واحد تبين منه؟ قال: نعم.

From Ishaq ibn Ammar, from Abu al-Hasan (peace be upon him), he said: I asked him about a man who divorced his pregnant wife, then took her back, then divorced her, then took her back, then divorced her the third time in one day - does she become separated from him? He said: Yes.

Hadith 28244

عن يزيد الكناسي، قال: سألت أبا جعفر (عليه السلام) عن طلاق الحبلى، فقال: يطلقها واحدة للعدة بالشهور والشهود.

From Yazid al-Kunasi, he said: I asked Abu Ja'far (peace be upon him) about divorcing a pregnant woman. He said: He divorces her once for the waiting period by months and witnesses.

قلت: فله أن يراجعها؟ قال: نعم، وهي امرأته. قلت: فان راجعها ومسّها، ثمّ أراد أن يطلقها تطليقة اخرى، قال: لا يطلقها حتى يمضي لها بعد ما يمسها شهر.

I said: Can he take her back? He said: Yes, and she is his wife. I said: If he takes her back and touches her, then wants to divorce her another divorce? He said: He does not divorce her until a month passes for her after he touches her.

قلت: وإن طلّقها ثانية، وأشهد، ثمّ راجعها، وأشهد على رجعتها ومسّها، ثمّ طلقها التطليقة الثالثة، وأشهد على طلاقها لكل عدة شهر، هل تبين منه كما تبين المطلقة للعدة التي لا تحل لزوجها حتى تنكح زوجا غيره؟ قال: نعم، قلت: فما عدتها؟ قال: عدتها أن تضع ما في بطنها ثمّ قد حلت للازواج.

I said: If he divorces her a second time and has witnesses, then takes her back and has witnesses for his taking her back and touches her, then divorces her the third divorce and has witnesses for his divorcing her - for each waiting period a month - does she become separated from him as the divorced woman for the waiting period becomes separated, who is not lawful for her husband until she marries another husband? He said: Yes. I said: What is her waiting period? He said: Her waiting period is that she gives birth to what is in her womb, then she becomes lawful for marriage.

أقول: انتظار الشهر محمول على الاستحباب ؛ لما مر، ويمكن حمل ما تضمن أن طلاق الحامل واحدة على الاستحباب أيضاً ؛ لما مر من استحباب انتظار المطلق انقضاء العدة. وقد تقدم ما يدل على بعض المقصود، ويأتي ما يدل عليه.

I (Hurr Amili) say: Waiting for the month is understood as recommended based on what has

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passed, and it is possible to understand what included that divorce of the pregnant woman is once as recommended also, based on what has passed regarding the recommendation for the divorcer to wait for the completion of the waiting period. What indicates some of the intended meaning has preceded, and what indicates it will come.

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CHAPTER 21

Dislike Of Divorce By The Sick Person And The Permissibility Of His Marriage; If He Consummated It, It Is Valid, Otherwise It Is Invalid, With No Dower And No Inheritance

[Hadith 28245 to 28248]

Hadith 28245

عن زرارة، عن أحدهما (عليهما السلام)، قال: ليس للمريض أن يطلّق، وله أن يتزوّج، فان هو تزوّج، ودخل بها فهو جائز، وإن لم يدخل بها حتى مات في مرضه فنكاحه باطل، ولا مهر لها ولا ميراث.

From Zurarah, from one of the two (peace be upon them), who said: The sick person should not divorce, but he may marry. If he marries and consummates the marriage with her, then it is permissible. But if he does not consummate it with her until he dies in his illness, then his marriage is invalid, and there is no dower for her and no inheritance.

Hadith 28246

عن عبيد بن زرارة، قال: سألت أبا عبدالله (عليه السلام) عن المريض، أله أن يطلق امرأته في تلك الحال؟ قال: لا، ولكن له أن يتزوج إن شاء، فان دخل بها ورثته، وإن لم يدخل بها فنكاحه باطل.

From Ubayd ibn Zurarah, who said: I asked Abu Abdullah (peace be upon him) about the sick person - may he divorce his wife in that condition? He said: No, but he may marry if he wishes. If he consummates the marriage with her, she inherits from him, but if he does not consummate it with her, then his marriage is invalid.

Hadith 28247

عن عبيد بن زرارة، عن أبي عبدالله (عليه السلام)، قال: لايجوز طلاق المريض، ويجوز نكاحه.

From Ubayd ibn Zurarah, from Abu Abdullah (peace be upon him), he said: The divorce of a sick person is not valid, but his marriage is valid.

Hadith 28248

عن زرارة، عن أبي عبدالله (عليه السلام)، قال: ليس للمريض أن يطلق، وله أن يتزوج.

From Zurarah, from Abu Abdullah (peace be upon him), he said: A sick person does not have the right to divorce, but he has the right to marry.

أقول: وتقدم ما يدل على ذلك في المصاهرة وغيرها، ويأتي ما يدل عليه في المواريث.

I (Hurr Amili) say: What indicates this has already been mentioned in the chapter on marriage relationships and elsewhere, and what indicates this will come in the chapter on inheritance.

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CHAPTER 22

When A Sick Person Divorces His Wife, Whether Irrevocably Or Revocably, Intending To Harm His Heirs, She Inherits From Him For Up To One Year As Long As He Has Not Recovered And She Has Not Remarried. If She Dies, He Does Not Inherit From Her Except During The Revocable Divorce Waiting Period.

[Hadith 28249 to 28263]

Hadith 28249

عن أبي العباس، عن أبي عبدالله (عليه السلام)، قال: إذا طلق الرجل المرأة في مرضه، ورثته مادام في مرضه ذلك، وإن انقضت عدّتها، إلاّ أن يصحّ منه، قال: قلت: فان طال به المرض، فقال: ما بينه وبين سنة.

From Abu al-Abbas, from Abu Abdullah (peace be upon him), he said: When a man divorces his wife during his illness, she inherits from him as long as he remains in that illness, even if her waiting period has ended, unless he recovers from it. He said: I asked: What if his illness is prolonged? He said: Between him and a year.

Hadith 28250

عن الحلبيّ، أنه سئل عن رجل يحضره الموت، فيطلّق امرأته، هل يجوز طلاقه؟ قال: نعم، وإن مات ورثته، وإن ماتت لم يرثها.

From al-Halabi, that he was asked about a man on his deathbed who divorces his wife - is his divorce valid? He said: Yes, and if he dies she inherits from him, but if she dies he does not inherit from her.

أقول: حمله الشيخ على ما إذا خرجت من العدة لما يأتي، ويمكن تخصيص العدة بغير الرجعية.

I (Hurr Amili) say: The Sheikh interpreted this as referring to when she has exited the waiting period based on what follows, and it is possible to specify the waiting period as applying to non-revocable divorce.

Hadith 28251

عن رجل، عن أبي عبدالله (عليه السلام)، أنه قال في رجل طلق امرأته تطليقتين في صحّة، ثمّ طلق التطليقة الثالثة، وهو مريض، أنها ترثه مادام في مرضه، وإن كان إلى سنة.

From a man, from Abu Abdullah (peace be upon him), that he said regarding a man who divorced his wife twice while healthy, then divorced the third divorce while he was ill, that she inherits from him as long as he remains in his illness, even if it extends to a year.

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Hadith 28252

عن سماعة، قال: سألته (عليه السلام) عن رجل طلق امرأته، وهو مريض، قال: ترثه ما دامت في عدّتها، وإن طلقها في حال إضرار فهي ترثه إلى سنة، فان زاد على السنة يوما واحدا لم ترثه، وتعتد منه أربعة أشهر وعشرا عدة المتوفى عنها زوجها.

From Sama'ah, he said: I asked him (peace be upon him) about a man who divorced his wife while he was ill. He said: She inherits from him as long as she remains in her waiting period, and if he divorced her in a state of causing harm, then she inherits from him up to a year. If it exceeds the year by even one day, she does not inherit from him, and she observes the waiting period of four months and ten days - the waiting period of one whose husband has died.

Hadith 28253

عن أبي الورد ـ كليهما ـ عن أبي جعفر (عليه السلام)، قال: إذا طلق الرجل امرأته تطليقة في مرضه، ثمّ مكث في مرضه حتى انقضت عدّتها، فانها ترثه ما لم تتزوج، فان كانت تزوجت بعد انقضاء العدّة، فانّها لا ترثه.

From Abu al-Ward - both of them - from Abu Ja'far (peace be upon him), he said: If a man divorces his wife once during his illness, then remains in his illness until her waiting period ends, then she inherits from him as long as she has not remarried. If she has remarried after the waiting period ended, then she does not inherit from him.

Hadith 28254

عن عبد الرحمن بن الحجاج، عمن حدثه، عن أبي عبدالله (عليه السلام)، قال في رجل طلق امرأته، وهو مريض قال: إن مات في مرضه ولم تتزوج ورثته، وإن كانت تزوجت فقد رضيت بالذي صنع لا ميراث لها.

From Abd al-Rahman ibn al-Hajjaj, from one who narrated to him, from Abu Abdullah (peace be upon him): He said regarding a man who divorced his wife while he was ill: If he dies during his illness and she has not remarried, she inherits from him. But if she has remarried, then she has accepted what he did and has no inheritance.

Hadith 28255

عن عبيد بن زرارة، عن أبي عبدالله (عليه السلام)، قال: سألته عن رجل طلق امرأته، وهو مريض، حتّى مضى لذلك سنة، قال: ترثه إذا كان في مرضه الذي طلّقها، لم يصح بين ذلك.

From Ubaid ibn Zurarah, from Abu Abdullah (peace be upon him): He said: I asked him about a man who divorced his wife while he was ill, and a year passed after that. He said: She inherits from him if it was during the illness in which he divorced her, provided he did not recover in between.

Hadith 28256

عن أبي العبّاس، عن أبي عبدالله (عليه السلام)، قال: قلت له: رجل طلق امرأته وهو مريض تطليقة، وقد كان طلقها قبل ذلك تطليقتين، قال: فانها ترثه إذا كان في مرضه، قلت: فما حد ذلك؟ قال: لا يزال مريضا حتى يموت، وإن طال ذلك إلى سنة.

From Abu al-Abbas, from Abu Abdullah (peace be upon him): He said: I said to him: A man divorced his wife with one divorce while he was ill, and he had divorced her twice before that. He

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said: She inherits from him if it was during his illness. I said: What is the limit for that? He said: He remains ill until he dies, even if that extends to a year.

Hadith 28257

عن الحلبي، وأبي بصير، وأبي العباس ـ جميعا ـ عن أبي عبدالله (عليه السلام) انه قال: ترثه ولا يرثها إذا انقضت العدة.

From al-Halabi, Abu Basir, and Abu al-Abbas - all of them - from Abu Abdullah (peace be upon him) that he said: She inherits from him but he does not inherit from her when the waiting period has ended.

Hadith 28258

عن زرارة، عن أبي عبدالله (عليه السلام) في الرجل يطلق امرأته في مرضه، قال: ترثه مادام في مرضه، وإن انقضت عدتها.

From Zurarah, from Abu Abdullah (peace be upon him) regarding a man who divorces his wife during his illness, he said: She inherits from him as long as he remains in his illness, even if her waiting period has ended.

Hadith 28259

عن أبي العباس، قال: سألت أبا عبدالله (عليه السلام) عن رجل طلق امرأته، وهو مريض؟.

From Abu al-Abbas, he said: I asked Abu Abdullah (peace be upon him) about a man who divorces his wife while he is sick.

قال: ترثه في مرضه ما بينها وبين سنة إن مات في مرضه ذلك، وتعتد من يوم طلقها عدة المطلّقة، ثمّ تتزوج إذا انقضت عدّتها، وترثه ما بينها وبين سنة إن مات في مرضه ذلك، فإن مات بعدما تمضي سنة لم يكن لها ميراث.

He said: She inherits from him during his illness for a period up to one year if he dies in that illness of his, and she observes the waiting period from the day he divorced her - the waiting period of a divorced woman. Then she may remarry when her waiting period ends, and she inherits from him for a period up to one year if he dies in that illness of his. But if he dies after a year has passed, there is no inheritance for her.

أقول: حمله الشيخ على ما إذا لم تتزوّج ؛ لما تقدم.

I (Hurr Amili) say: The Shaykh interpreted this as applying when she has not remarried, based on what preceded.

Hadith 28260

عن الحسين بن سعيد، (عن صفوان، عن يحيى الازرق)، عن عبد الرحمن، عن موسى بن جعفر (عليه السلام)، قال: سألته عن رجل يطلق امرأته آخر طلاقها، قال: نعم يتوارثان في العدة.

From Al-Husayn ibn Sa'id, (from Safwan, from Yahya al-Azraq), from Abd al-Rahman, from Musa ibn Ja'far (peace be upon him), he said: I asked him about a man who divorces his wife with her final divorce. He said: Yes, they inherit from each other during the waiting period (iddah).

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أقول: هذا مخصوص بالمريض : لما مضى، ويأتي، ومفهومه غير مراد لما عرفت، ويحتمل أن يكون المراد بالعدة هنا: السنة، فانها عدة الميراث كما تقدم، والتوارث مجاز لثبوته من أحد الطرفين خاصّة، أو المراد بآخر الطلاق: غير الثالثة كالرابعة والخامسة، أو بمعنى: أنّه لا يريد رجعتها أبدا، والله أعلم.

I (Hurr Amili) say: This is specific to the sick person, as has been mentioned and will come, and its implication is not intended as you have learned. It is possible that what is meant by the waiting period (iddah) here is the year, as it is the waiting period for inheritance as previously mentioned. The mutual inheritance is metaphorical for its establishment from one party only. Or what is meant by the final divorce is other than the third, like the fourth and fifth, or in the sense that he does not intend to take her back ever. And Allah knows best.

Hadith 28261

عن يحيى الازرق، عن أبي الحسن (عليه السلام)، قال: المطلقة ثلاثا ترث وتورث، ما دامت في عدتها.

From Yahya al-Azraq, from Abu al-Hasan (peace be upon him), he said: The woman divorced three times inherits and is inherited from, as long as she remains in her waiting period.

Hadith 28262

عن محمّد بن مسلم عن أبي جعفر (عليه السلام)، قال: سألته عن الرجل يطلق امرأته تطليقتين، ثمّ يطلقها ثالثة وهو مريض، قال: ترثه.

From Muhammad ibn Muslim from Abu Ja'far (peace be upon him), he said: I asked him about a man who divorces his wife twice, then divorces her a third time while he is sick. He said: She inherits from him.

Hadith 28263

عن عبيد بن زرارة، عن أبي عبدالله (عليه السلام) في الرجل يطلق امرأته تطليقتين، ثمّ يطلقها الثالثة وهو مريض، قال: ترثه.

From Ubaid ibn Zurarah, from Abu Abdullah (peace be upon him) regarding a man who divorces his wife twice, then divorces her a third time while he is sick. He said: She inherits from him.

أقول: ويأتي ما يدل على ذلك، ويأتي أيضا ما يدل على ثبوت الميراث في العدة الرجعية خاصة، لا بعدها، وهو مخصوص بما عدا المريض.

I (Hurr Amili) say: What indicates this will come, and what also indicates that inheritance is established during the revocable waiting period specifically, not after it, will also come. This is particular to cases other than the sick person.

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CHAPTER 23

Ruling On Divorcing The Wife Of A Missing Person, Her Waiting Period, And Her Remarriage

[Hadith 28264 to 28268]

Hadith 28264

عن بريد بن معاوية، قال: سألت أبا عبدالله (عليه السلام) عن المفقود، كيف تصنع امرأته؟ فقال: ماسكتت عنه وصبرت فخل عنها، وإن هي رفعت أمرها إلى الوالي أجلها أربع سنين، ثمّ يكتب إلى الصقع الذي فقد فيه فليسأل عنه،

From Buraid ibn Mu'awiyah, he said: I asked Abu Abdullah (peace be upon him) about the missing person - how should his wife conduct herself? He said: If she remains silent about it and is patient, then leave her be. But if she brings her matter to the governor, he gives her a deadline of four years, then writes to the region where he went missing to inquire about him.

فان خبر عنه بحياة صبرت، وإن لم يخبر عنه بحياة حتى تمضي الاربع سنين دعا ولي الزوج المفقود، فقيل له: هل للمفقود مال؟ فان كان للمفقود مال أنفق عليها، حتّى يعلم حياته من موته. وإن لم يكن له مال قيل للولي: أنفق عليها، فان فعل فلا سبيل لها إلى أن تتزوج ما أنفق عليها، وإن أبى أن ينفق عليها، أجبره الوالي على أن يطلق تطليقة في استقبال العدة وهي طاهر،

If news comes of his being alive, she waits. If no news comes of his being alive until the four years pass, then the guardian of the missing husband is called and told: Does the missing person have wealth? If the missing person has wealth, it is spent on her until his life or death becomes known. If he has no wealth, the guardian is told: Spend on her. If he does so, then she has no way to marry as long as he spends on her. If he refuses to spend on her, the governor compels him to divorce her with one divorce at the beginning of the waiting period while she is in a state of purity.

فيصير طلاق الولي طلاق الزوج، فان جاء زوجها قبل أن تنقضي عدتها من يوم طلقها الوليُّ، فبدا له أن يراجعها فهي امرأته، وهي عنده على تطليقتين، وإن انقضت العدة قبل أن يجيء، ويراجع فقد حلت للأزواج، ولا سبيل للاول عليها.

Thus the guardian's divorce becomes the husband's divorce. If her husband comes before her waiting period expires from the day the guardian divorced her, and he wishes to take her back, then she is his wife and remains with him having two divorces. If the waiting period expires before he comes and takes her back, then she becomes lawful for other husbands, and the first husband has no claim over her.

Hadith 28265

قال الصدوق: وفي رواية اخرى: أنه إن لم يكن للزوج ولي طلّقها الوالي، ويشهد شاهدين عدلين، فيكون طلاق الوالي طلاق الزوج، وتعتد أربعة أشهر وعشراً، ثمّ تزوَّج إن شاءت.

Al-Saduq said: In another narration: If the husband has no guardian, the governor divorces her and has two just witnesses testify, so the governor's divorce becomes the husband's divorce. She observes a waiting period of four months and ten days, then may marry if she wishes.

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Hadith 28266

عن السكوني، عن جعفر، عن أبيه (عليهما السلام): أنّ عليّاً (عليه السلام) قال في المفقود: لا تتزوج امرأته حتى يبلغها موته، أو طلاق، أو لحوق بأهل الشرك.

From al-Sakuni, from Ja'far, from his father (peace be upon them both): that Ali (peace be upon him) said regarding the missing person: His wife should not marry until news of his death, or divorce, or his joining the people of shirk reaches her.

Hadith 28267

عن الحلبيّ، عن أبي عبدالله (عليه السلام)، أنّه سئل عن المفقود، فقال: المفقود إذا مضى له أربع سنين بعث الوالي، أو يكتب إلى الناحية التي هو غائب فيها، فإن لم يوجد له أثر، أمر الوالي وليه أن ينفق عليها، فما أنفق عليها فهي امرأته، قال: قلت: فإنها تقول: فاني اريد ما تريد النساء، قال: ليس ذاك لها ولا كرامة، فان لم ينفق عليها وليّه، أو وكيله أمره أن يطلّقها، فكان ذلك عليها طلاقا واجبا.

From al-Halabi, from Abu Abdullah (peace be upon him), that he was asked about the missing person. He said: The missing person - when four years have passed for him, the ruler sends or writes to the region where he is absent. If no trace of him is found, the ruler orders his guardian to spend on her. Whatever he spends on her, she remains his wife. He said: I said: What if she says: I want what women want? He said: That is not for her, and no honor in it. If his guardian or agent does not spend on her, he orders him to divorce her, and that would be an obligatory divorce upon her.

Hadith 28268

عن أبي الصباح الكناني، عن أبي عبدالله (عليه السلام) في امرأة غاب عنها زوجها أربع سنين، ولم ينفق عليها (ولم تدر) أحيّ هو، أم ميّت؟ أيجبر وليّه على أن يطلّقها؟ قال: نعم، وإن لم يكن له ولي طلقها السلطان.

From Abu al-Sabah al-Kinani, from Abu Abdullah (peace be upon him) regarding a woman whose husband has been absent from her for four years and has not spent on her, and she does not know whether he is alive or dead: Should his guardian be compelled to divorce her? He said: Yes, and if he has no guardian, the ruler divorces her.

قلت: فان قال: الولي: أنا انفق عليها، قال: فلا يجبر على طلاقها، قال: قلت: أرأيت إن قالت: أنا اريد مثل ما تريد النساء ولا أصبر ولا أقعد كما أنا، قال: ليس لها ذلك، ولا كرامة إذا أنفق عليها.

I said: What if the guardian says: I will spend on her? He said: Then he is not compelled to divorce her. He said: I said: What do you think if she says: I want what women want and I cannot be patient nor remain as I am? He said: That is not for her, and no honor in it if he spends on her.

أقول: وتقدم ما يدل على ذلك في المصاهرة، ويأتي ما يدل عليه في المواريث.

I (Hurr Amili) say: What indicates this has already been mentioned in the section on marriage relationships, and what indicates it will come in the section on inheritance.

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CHAPTER 24

When A Slave Woman Is Divorced Twice, She Becomes Forbidden To The Divorcer Until She Marries Another Husband, Even If The Divorcer Is Free

[Hadith 28269 to 28275]

Hadith 28269

عن عيص بن القاسم، قال: إن ابن شبرمة قال: الطلاق للرجل، فقال أبو عبدالله (عليه السلام): الطلاق للنساء، وتبيان ذلك: أن العبد تكون تحته الحرّة، فيكون تطليقها ثلاثا، ويكون الحر تحته الامة، فيكون طلاقها تطليقتين.

From Iss ibn al-Qasim, he said: Ibn Shubruma said: "Divorce belongs to the man." So Abu Abdullah (peace be upon him) said: "Divorce belongs to the women," and the explanation of that is: that a slave may have a free woman under him, so her divorce would be three times, and a free man may have a slave woman under him, so her divorce would be two times.

Hadith 28270

عن زرارة، عن أبي جعفر (عليه السلام)، قال: سألته عن حر تحته أمة، أو عبد تحته حرّة، كم طلاقها؟ وكم عدتها؟ فقال: السنّة في النساء في الطلاق، فان كانت حرة فطلاقها ثلاثا، وعدتها ثلاثة أقراء، وإن كان حر تحته أمة فطلاقها تطليقتان، وعدتها قرءان.

From Zurarah, from Abu Ja'far (peace be upon him), he said: I asked him about a free man who has a slave woman under him, or a slave who has a free woman under him - how many divorces does she have? And what is her waiting period? He said: "The established practice regarding women in divorce is: if she is free, then her divorce is three times, and her waiting period is three menstrual cycles. And if a free man has a slave woman under him, then her divorce is two times, and her waiting period is two menstrual cycles."

Hadith 28271

عن الحلبي، عن أبي عبدالله (عليه السلام)، قال: قضى أمير المؤمنين (عليه السلام) في أمة طلقها زوجها تطليقتين، ثمّ وقع عليها، فجلده.

From al-Halabi, from Abu Abdullah (peace be upon him), who said: Amir al-Muminin (peace be upon him) ruled regarding a female slave whose husband had divorced her twice, then had intercourse with her, so he flogged him.

Hadith 28272

عن أبي بصير، عن أبي عبدالله (عليه السلام)، قال: سألته عن طلاق الامة؟ قال: تطليقتان.

From Abu Basir, from Abu Abdullah (peace be upon him), who said: I asked him about the divorce of a female slave. He said: Two divorces.

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Hadith 28273

عن أبي اسامة، عن أبي عبدالله (عليه السلام)، قال: قال عمر على المنبر: ما تقولون يا أصحاب محمّد ! في تطليق الامة ؟ فلم يجبه أحد، فقال: ما تقول يا صاحب البرد المعافري ! يعني: أمير المؤمنين (عليه السلام)، فأشار بيده: تطليقتان.

From Abu Usama, from Abu Abdullah (peace be upon him), who said: Umar said from the pulpit: What do you say, O companions of Muhammad, regarding the divorce of a female slave? No one answered him, so he said: What do you say, O owner of the Yemeni cloak! - meaning Amir al-Muminin (peace be upon him) - so he gestured with his hand: Two divorces.

Hadith 28274

عن محمّد بن سنان، عن الرضا (عليه السلام) فيما كتب عليه: وعلة طلاق المملوك اثنتين ؛ لانّ طلاق الامة على النصف، فجعله اثنتين احتياطا لكمال الفرائض، وكذلك في الفرق في العدة للمتوفى عنها زوجها.

From Muhammad ibn Sinan, from al-Rida (peace be upon him) regarding what he wrote to him: The reason for the divorce of a slave being two times is because the divorce of a female slave is half, so it was made two as a precaution for the completion of the religious obligations, and likewise regarding the difference in the waiting period for one whose husband has died.

Hadith 28275

عن عبدالله بن جوتعة: أن رجلين سألا عمر عن طلاق الامة فجاء بهما إلى علي (عليه السلام)، فقال له: كم طلاق الامة ؟ فأشار باصبعيه هكذا، يعني اثنتين.

From Abdullah ibn Jawta'a: That two men asked Umar about the divorce of a female slave, so he brought them to Ali (peace be upon him) and said to him: How many divorces does a female slave have? So he pointed with his two fingers like this, meaning two.

أقول: وتقدم ما يدل على ذلك في استيفاء العدد، ويأتي ما يدل عليه هنا، وفي العدد.

I (Hurr Amili) say: What has preceded indicates this in the fulfillment of the number, and what will come indicates it here and in the number.

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CHAPTER 25

That When A Free Woman Is Divorced Three Times, She Becomes Forbidden To Her Husband Until She Marries Another Husband, Not Before That, Even If The Husband Is A Slave

[Hadith 28276 to 28283]

Hadith 28276

عن حماد بن عيسى، عن أبي عبدالله (عليه السلام)، قال: قلت له: إذا كانت الحرة تحت العبد، كم طلاقها؟ فقال: قال علي (عليه السلام): الطلاق والعدة بالنساء.

From Hammad ibn Isa, from Abu Abdullah (peace be upon him), he said: I said to him: When a free woman is under a slave, how many divorces does she have? He said: Ali (peace be upon him) said: Divorce and waiting period follow the women.

Hadith 28277

عن أبي الصباح الكناني، عن أبي عبدالله (عليه السلام)، قال: اذا كان الرجل حرّاً، وامرأته أمة، فطلاقها تطليقتان، وإذا كان الرجل عبداً، وهي حرّة، فطلاقها ثلاث.

From Abu al-Sabah al-Kinani, from Abu Abdullah (peace be upon him), he said: When the man is free and his wife is a slave, her divorce is two divorces, and when the man is a slave and she is free, her divorce is three.

Hadith 28278

عن محمّد بن مسلم، عن أبي جعفر (عليه السلام)، قال: طلاق المرأة إذا كانت عند مملوك ثلاث تطليقات، وإذا كانت مملوكة تحت حر فتطليقتان.

From Muhammad ibn Muslim, from Abu Ja'far (peace be upon him), who said: The divorce of a woman when she is married to a slave is three divorces, and when she is a slave married to a free man, then it is two divorces.

Hadith 28279

عن الحلبي، عن أبي عبدالله (عليه السلام)، قال: طلاق الحرة إذا كانت تحت العبد ثلاث تطليقات، وطلاق الامة إذا كانت تحت الحر تطليقتان.

From al-Halabi, from Abu Abdullah (peace be upon him), who said: The divorce of a free woman when she is married to a slave is three divorces, and the divorce of a slave woman when she is married to a free man is two divorces.

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Hadith 28280

عن أبي بصير ـ يعني: المرادي ـ عن أبي عبدالله (عليه السلام)، قال: طلاق الحرة إذا كانت تحت العبد ثلاث تطليقات، وطلاق الامة إذا كانت تحت الحر تطليقتان.

From Abu Basir - meaning: al-Muradi - from Abu Abdullah (peace be upon him), who said: The divorce of a free woman when she is married to a slave is three divorces, and the divorce of a slave woman when she is married to a free man is two divorces.

Hadith 28281

عن حماد بن عيسى، عن أبي عبدالله (عليه السلام)، قال: قال أميرالمؤمنين (عليه السلام): إذا كانت الحرة تحت العبد فالطلاق والعدة بالنساء، يعني يطلقها ثلاثا، وتعتد ثلاث حيض.

From Hammad ibn Isa, from Abu Abdullah (peace be upon him), who said: Amir al-Muminin (peace be upon him) said: When a free woman is married to a slave, the divorce and waiting period follow the rules for women, meaning he divorces her three times, and she observes a waiting period of three menstrual cycles.

Hadith 28282

عن عبدالله بن سنان، عن أبي عبدالله (عليه السلام)، قال: طلاق المملوك للحرة ثلاث تطليقات، وطلاق الحر للامة تطليقتان.

From Abdullah ibn Sinan, from Abu Abdullah (peace be upon him), who said: The divorce of a slave for a free woman is three divorces, and the divorce of a free man for a slave woman is two divorces.

Hadith 28283

عن داود بن سرحان، عن أبي عبدالله (عليه السلام)، قال: طلاق الحر إذا كان عنده أمة تطليقتان، وطلاق الحرة إذا كانت تحت المملوك ثلاث.

From Dawud ibn Sarhan, from Abu Abdullah (peace be upon him), who said: The divorce of a free man when he has a slave woman is two divorces, and the divorce of a free woman when she is married to a slave is three divorces.

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CHAPTER 26

That If A Slave Woman Is Divorced By Her Husband With Two Divorces, Then He Purchases Her, It Is Not Lawful For Him To Have Intercourse With Her Until She Marries Another Husband

[Hadith 28284 to 28291]

Hadith 28284

عن عبدالله بن سنان، قال: سألت أبا عبدالله (عليه السلام) عن رجل كانت تحته أمة، فطلّقها على السنة فبانت منه، ثمّ اشتراها بعد ذلك قبل أن تنكح زوجا غيره، قال: أليس قد قضى علي (عليه السلام) في هذا؟ أحلتها آية وحرمتها اخرى، وأنا أنهى عنها نفسي وولدي.

From Abdullah ibn Sinan, he said: I asked Abu Abdullah (peace be upon him) about a man who had a slave woman as his wife, and he divorced her according to the Sunnah so she became separated from him, then he purchased her after that before she married another husband. He said: Did not Ali (peace be upon him) judge in this matter? One verse made her lawful and another made her unlawful, and I forbid her for myself and my children.

Hadith 28285

عن أبي بصير عن أبي عبدالله (عليه السلام)، قال: قضى علي (عليه السلام) في أمة طلقها زوجها تطليقتين ثمّ وقع عليها، فجلده.

From Abu Basir, from Abu Abdullah (peace be upon him), he said: Ali (peace be upon him) judged regarding a slave woman whose husband divorced her with two divorces, then he had intercourse with her, so he flogged him.

Hadith 28286

عن بريد العجلي، عن أبي عبدالله (عليه السلام) في الامة يطلقها زوجها تطليقتين، ثمّ يشتريها، قال: لا حتى تنكح زوجا غيره.

From Burayd al-Ijli, from Abu Abdullah (peace be upon him) regarding a slave woman whom her husband divorces twice, then buys her. He said: No, not until she marries another husband.

Hadith 28287

عن أبي بصير قال: قلت لابي عبدالله (عليه السلام): رجل كانت تحته أمة، فطلّقها طلاقا بائناً، ثمّ اشتراها بعد، قال: يحل له فرجها من أجل شرائها، والحر والعبد في هذه المنزلة سواء.

From Abu Basir who said: I said to Abu Abdullah (peace be upon him): A man who had a slave woman under him, then divorced her with an irrevocable divorce, then bought her afterwards. He said: Her private parts become lawful for him due to his purchasing her, and the free man and the slave are equal in this matter.

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أقول: حمله الشيخ على من طلق طلقة واحدة بائنا، وجوز حمله على ما لو تزوجت غيره ؛ لما مضى، ويأتي، ويحتمل التقية.

I (Hurr Amili) say: The Shaykh interpreted this as applying to one who divorced with a single irrevocable divorce, and it is permissible to interpret it as applying to a case where she had married another, based on what has passed and what is to come, and taqiyyah is possible.

Hadith 28288

عن الحلبي، عن أبي عبدالله (عليه السلام) قال: سألته عن رجل حر كانت تحته أمة، فطلّقها طلاقا بائناً، ثمّ اشتراها، هل يحلّ له أن يطأها؟ قال: لا.

From al-Halabi, from Abu Abdullah (peace be upon him) who said: I asked him about a free man who had a slave woman under him, then divorced her with an irrevocable divorce, then bought her - is it lawful for him to have intercourse with her? He said: No.

Hadith 28289

عن بريد العجلي، عن أبي عبدالله (عليه السلام) أنه قال في رجل تحته أمة، فطلّقها تطليقتين، ثمّ اشتراها بعد، قال: لا يصلح له أن ينكحها، حتى تزوج زوجا غيره، وحتى يدخل بها في مثل ما خرجت منه.

From Burayd al-Ijli, from Abu Abdullah (peace be upon him) that he said regarding a man who has a slave woman under him, then divorces her twice, then purchases her afterwards: It is not permissible for him to marry her until she marries another husband, and until he enters into her in the same manner she departed from it.

Hadith 28290

عن سماعة، قال: سألته عن رجل تزوج امرأة مملوكة، ثمّ طلّقها، ثمّ اشتراها بعد، هل تحل له؟ قال: لا، حتّى تنكح زوجا غيره.

From Sama'a, he said: I asked him about a man who married a slave woman, then divorced her, then purchased her afterwards - is she lawful for him? He said: No, not until she marries another husband.

Hadith 28291

قال الكليني بعدما ذكر حديث الحلبي: قال ابن أبي عمير: وفي حديث آخر قال: حل له فرجها من أجل شرائها، والحرُّ والعبد في ذلك سواء.

Al-Kulayni said after mentioning the hadith of al-Halabi: Ibn Abi Umayr said: And in another hadith he said: Her private parts became lawful for him due to his purchasing her, and the free man and the slave are equal in this matter.

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CHAPTER 27

When A Female Slave Is Divorced Twice, Then Her Master Has Intercourse With Her, She Does Not Become Lawful For Her Husband Until She Marries Another Husband

[Hadith 28292 to 28294]

Hadith 28292

عن عبد الملك بن أعين، قال: سألته عن رجل زوج جاريته رجلاً، فمكثت معه ما شاء الله، ثمّ طلّقها، فرجعت إلى مولاها، فوطأها أتحل لزوجها إذا أراد أن يراجعها؟ فقال: لا، حتّى تنكح زوجا غيره.

From Abd al-Malik ibn A'yan, he said: I asked him about a man who married his slave girl to a man, and she remained with him for as long as Allah willed, then he divorced her, so she returned to her master, and he had intercourse with her. Does she become lawful for her husband if he wants to take her back? He said: No, not until she marries another husband.

Hadith 28293

عن الفضيل، عن أحدهما (عليهما السلام)، قال: سألته عن رجل زوج عبده أمته، ثمّ طلّقها تطليقتين، (يحلّ له أن يراجعها)، إن أراد مولاها؟ قال: لا.

From al-Fudayl, from one of them (peace be upon them both), he said: I asked him about a man who married his slave to his slave girl, then divorced her two divorces. Is it permissible for him to take her back if her master wants? He said: No.

قلت: أفرأيت إن وطأها مولاها، أيحلّ للعبد أن يراجعها؟ قال: لا، حتّى تزوج زوجا غيره، ويدخل بها، فيكون نكاحا مثل نكاح الأوّل، وإن كان قد طلقها واحدة، فأراد مولاها راجعها.

I said: What do you think if her master has intercourse with her, is it permissible for the slave to take her back? He said: No, not until she marries another husband and he consummates the marriage with her, so that it becomes a marriage like the first marriage. But if he had divorced her once, and her master wanted to take her back, then he may.

Hadith 28294

أحمد بن محمّد بن عيسى في (نوادره): عن ابن أبي عمير، عن حماد عن الحلبيّ، قال: سألت أبا عبدالله (عليه السلام) عن رجل يزوج جاريته رجلاً، ثمّ تمكث عنده ما شاء الله، ثمّ طلّقها، فرجعت إلى مولاها، أيحل لزوجها الأوّل أن يراجعها؟ قال: لا، حتى تنكح زوجا غيره.

Ahmad ibn Muhammad ibn Isa in (his rare traditions): from Ibn Abi Umayr, from Hammad, from al-Halabi, who said: I asked Abu Abdullah (peace be upon him) about a man who marries his female slave to a man, then she remains with him for whatever period Allah wills, then he divorces her and she returns to her master - is it permissible for her first husband to take her back? He said:

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No, not until she marries another husband.

أقول: ويأتي ما يدل على ذلك، وتقدم ما يدل على اشتراط دوام العقد في التحليل.

I (Hurr Amili) say: What indicates this will come, and what has preceded indicates the condition of permanence of the marriage contract in making lawful.

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CHAPTER 28

That If A Slave Woman Is Divorced Twice, Then She Is Freed Or Her Husband Is Freed, Or Both Are Freed, She Does Not Become Lawful For Her Husband Until She Marries Another Husband, And If She Is Divorced Once Then Freed, The Emancipation Does Not Nullify The Divorce, And She Remains With Him Having One Divorce

[Hadith 28295 to 28299]

Hadith 28295

عن القاسم، عن رفاعة، قال: سألت أبا عبدالله (عليه السلام) عن العبد والامة يطلقها تطليقتين، ثمّ يعتقان جميعا، هل يراجعها؟ قال: لا، حتّى تنكح زوجا غيره، فتبين منه.

From al-Qasim, from Rifa'ah, who said: I asked Abu Abdullah (peace be upon him) about the slave and the slave woman - he divorces her twice, then they are both emancipated. Can he take her back? He said: No, until she marries another husband and is separated from him.

Hadith 28296

عن محمّد بن مسلم، عن أبي جعفر (عليه السلام)، قال: المملوك إذا كانت تحته مملوكة فطلّقها، ثمّ اعتقا صاحبها، كانت عنده على واحدة.

From Muhammad ibn Muslim, from Abu Ja'far (peace be upon him), who said: When a slave has a slave woman under him as wife and he divorces her, then their master frees them, she remains with him having one (divorce counted against her).

Hadith 28297

عن الحلبيّ، قال: قال أبو عبدالله (عليه السلام) في العبد تكون تحته الامة فيطلقها تطليقة، ثمّ اعتقا جميعا: كانت عنده على تطليقة واحدة.

From al-Halabi, he said: Abu Abdullah (peace be upon him) said regarding a slave who has a female slave under him and he divorces her with one divorce, then they are both freed: she remains with him having received one divorce.

Hadith 28298

عن هشام بن سالم، عن أبي عبدالله (عليه السلام)، قال: ذكر أن العبد إذا كان تحته الامة فطلقها تطليقة، ثمّ اعتقا جميعاً، كانت عنده على تطليقة واحدة.

From Hisham ibn Salim, from Abu Abdullah (peace be upon him), he said: It was mentioned that when a slave has a female slave under him and he divorces her with one divorce, then they are both freed, she remains with him having received one divorce.

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Hadith 28299

عن صفوان بن يحيى، عن العيص، قال: سألت أبا عبدالله (عليه السلام) عن مملوك طلق امرأته، ثمّ اعتقا جميعاً، هل يحلّ له مراجعتها قبل أن تزوج غيره؟ قال: نعم.

From Safwan ibn Yahya, from al-Ays, he said: I asked Abu Abdullah (peace be upon him) about a slave who divorced his wife, then they were both freed - is it permissible for him to take her back before she marries another? He said: Yes.

أقول: حمله الشيخ على من طلقها واحدة ؛ لما مر، وتقدم ما يدل على ذلك عموما.

I (Hurr Amili) say: The Shaykh interpreted this as applying to one who divorced her once, based on what has passed, and what has preceded indicates this generally.

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CHAPTER 29

That When A Master Separates His Slave Woman From His Male Slave And Separates Between Them Twice, She Does Not Become Lawful For The Male Slave Until She Marries Another Husband, And If The Master Has Intercourse With Her, She Does Not Become Lawful For The Male Slave

[Hadith 28300 to 28300]

Hadith 28300

عن أحمد بن زياد، عن أبي الحسن (عليه السلام)، قال: سألته عن رجل يزوج عبده أمته، ثمّ يبدو للرجل في أمته فيعزلها عن عبده، ثمّ يستبرؤها ويواقعها، ثمّ يردها على عبده، ثمّ يبدو له بعد فيعزلها عن عبده، أيكون عزل السيد الجارية عن زوجها مرتين طلاقاً، لا تحلّ له حتّى تنكح زوجاً غيره، أم لا؟

From Ahmad ibn Ziyad, from Abu al-Hasan (peace be upon him), he said: I asked him about a man who marries his male slave to his slave woman, then the man changes his mind regarding his slave woman and separates her from his male slave, then he performs istibra' (waiting period to ensure she is not pregnant) with her and has intercourse with her, then he returns her to his male slave, then he changes his mind again and separates her from his male slave. Does the master's separation of the slave woman from her husband twice count as divorce, so that she does not become lawful for him until she marries another husband, or not?

فكتب (عليه السلام): لا تحلّ له إلاّ بنكاح.

So he wrote (peace be upon him): She does not become lawful for him except through marriage.

أقول: وتقدم ما يدل على أن تفريق السيد بين الامة والعبد بمنزلة الطلاق.

I (Hurr Amili) say: What has preceded indicates that the master's separation between the slave woman and the male slave is equivalent to divorce.

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CHAPTER 30

Ruling On The Wife Of An Apostate

[Hadith 28301 to 28301]

Hadith 28301

عن محمّد بن مسلم، قال: سألت أبا جعفر (عليه السلام) عن المرتدّ، فقال: من رغب عن الاسلام، وكفر بما انزل على محمّد (صلى الله عليه وآله) بعد إسلامه فلا توبة له، وقد وجب قتله وبانت منه امرأته، ويقسم ما ترك على ولده.

From Muhammad ibn Muslim, he said: I asked Abu Ja'far (peace be upon him) about the apostate, and he said: Whoever turns away from Islam and disbelieves in what was revealed to Muhammad (may Allah's peace and blessings be upon him and his family) after his Islam, there is no repentance for him, his killing has become obligatory, his wife is separated from him, and what he left behind is divided among his children.

أقول: ويأتي ما يدل على ذلك هنا، وفي المواريث، وفي الحدود.

I (Hurr Amili) say: What indicates this will come here, and in the section on inheritance, and in the section on legal punishments.

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CHAPTER 31

Ruling On The Divorce Of A Polytheist From A Polytheist Woman

[Hadith 28302 to 28302]

Hadith 28302

محمّد بن الحسن بإسناده، عن علي بن جعفر، أنّه سأل أخاه موسى بن جعفر (عليه السلام) عن يهودي أو نصراني طلق تطليقة، ثمّ أسلم هو وامرأته، ما حالهما؟ قال: ينكحها نكاحا جديدا، قلت: فان طلقها بعد إسلامه تطليقة أو تطليقتين، هل تعتدّ بما كان طلّقها قبل اسلامها؟ قال: لا تعتد بذلك.

Muhammad ibn al-Hasan by his chain of narration, from Ali ibn Ja'far, that he asked his brother Musa ibn Ja'far (peace be upon him) about a Jew or Christian who divorced once, then he and his wife both embraced Islam - what is their status? He said: He should marry her with a new marriage contract. I said: If he divorced her after his Islam once or twice, does she count what he had divorced her before their Islam? He said: She does not count that.

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CHAPTER 32

That Whoever Enjoys Temporary Marriage With A Woman Three Times, She Does Not Become Forbidden To Him Until She Marries Another Husband, Nor Does She Become Forbidden After The Ninth Time Either, And Likewise For A Woman Possessed Through Ownership

[Hadith 28303 to 28304]

Hadith 28303

عن زرارة، عن أبي جعفر (عليه السلام) في الرجل يتزوّج المتعة، وينقضي شرطها، ثمّ يتزوجها رجل آخر حتّى بانت منه، ثمّ يتزوجها الأوّل حتى بانت منه ثلاثاً، وتزوّجت ثلاثة أزواج، يحل للاول أن يتزوجها؟ قال: نعم، كم شاء، ليس هذه مثل الحرة، هذه مستأجرة، وهي بمنزلة الاماء.

From Zurarah, from Abu Ja'far (peace be upon him) regarding a man who contracts temporary marriage and its term expires, then another man marries her until she is separated from him, then the first man marries her until she is separated from him three times, and she has married three husbands - is it permissible for the first man to marry her? He said: Yes, as much as he wishes. This is not like a free woman; this one is hired, and she is in the position of slave women.

Hadith 28304

عن عليّ بن الحكم، عن أبان، عن بعض أصحابه، عن أبي عبدالله (عليه السلام) في الرجل يتمتع من المرأة المرات، قال: لا بأس يتمتع منها ما شاء.

From Ali ibn al-Hakam, from Aban, from some of his companions, from Abu Abdullah (peace be upon him) regarding a man who enjoys temporary marriage with a woman multiple times. He said: There is no harm; he may enjoy temporary marriage with her as much as he wishes.

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CHAPTER 33

Categories Of Irrevocable Divorce, And That What Is Other Than It Is Revocable

[Hadith 28305 to 28308]

Hadith 28305

عن محمّد بن مسلم، عن أبي جعفر (عليه السلام)، قال: التي لا يحبل مثلها لا عدة عليها.

From Muhammad ibn Muslim, from Abu Ja'far (peace be upon him), who said: The woman who is not of the type who can conceive has no waiting period upon her.

Hadith 28306

عن جميل، عن بعض أصحابنا، (عن أبي عبدالله (عليه السلام))، قال: إذا طلقت المرأة التي لم يدخل بها بانت بتطليقة واحدة.

From Jamil, from some of our companions, from Abu Abdullah (peace be upon him), who said: When a woman with whom consummation has not taken place is divorced, she becomes irrevocably divorced with a single divorce pronouncement.

Hadith 28307

عن حماد بن عثمّان، عمن رواه، عن أبي عبدالله (عليه السلام) في الصبية التي لا يحيض مثلها، والتي قد يئست من المحيض، قال: عليهما عدّة، وإن دخل بهما.

From Hammad ibn Uthman, from the one who narrated it, from Abu Abdullah (peace be upon him) regarding the young girl who does not menstruate like her (peers), and the one who has despaired of menstruation, he said: Both of them have a waiting period, even if he has consummated the marriage with them.

Hadith 28308

عن عبد الرحمن بن الحجّاج، قال: قال أبو عبدالله (عليه السلام): ثلاث يتزوجن على كل حال: التي لم تحض ومثلها لا تحيض ـ إلى أن قال: ـ والتي لم يدخل بها، والتي قد يئست من المحيض.

From Abd al-Rahman ibn al-Hajjaj, he said: Abu Abdullah (peace be upon him) said: Three (types of women) may be married under all circumstances: The one who has not menstruated and one like her does not menstruate - until he said - and the one with whom marriage has not been consummated, and the one who has despaired of menstruation.

أقول: وتقدم ما يدل على بعض المقصود، ويأتي ما يدل على أن المطلقة ثلاثاً، والمختلعة والمباراة أيضا بوائن، وما عدا الست رجعي.

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I (Hurr Amili) say: What has preceded indicates some of the intended meaning, and what follows will indicate that the woman divorced three times, the one who sought khula' (divorce initiated by wife), and the one who underwent mubarat (mutual divorce) are also irrevocably divorced, and what is other than the six (categories) is revocable.

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CHAPTER 34

Dislike Of Taking Back (One's Wife) Without Intention Of Keeping Her, But Rather With Intention Of Divorcing Her

[Hadith 28309 to 28311]

Hadith 28309

عن الحسن بن زياد، عن أبي عبدالله (عليه السلام)، قال: لا ينبغي للرجل أن يطلق امرأته، ثمّ يراجعها، وليس له فيها حاجة، ثمّ يطلقها، فهذا الضرار الذي نهى الله عزّ وجلّ عنه، إلا أن يطلّق، ثمّ يراجع، وهو ينوي الامساك.

From al-Hasan ibn Ziyad, from Abu Abdullah (peace be upon him), he said: It is not proper for a man to divorce his wife, then take her back when he has no need for her, then divorce her. This is the harm that Allah the Mighty and Majestic has forbidden, except that he divorce, then take her back while he intends to keep her.

Hadith 28310

عن الحلبي، عن أبي عبدالله (عليه السلام)، قال: سألته، عن قول الله عزّ وجلّ: (ولا تمسكوهن ضرارا لتعتدوا) قال: الرجل يطلّق، حتّى إذا كادت أن يخلو أجلها راجعها، ثمّ طلقها يفعل ذلك ثلاث مرّات، فنهى الله عزّ وجلّ عن ذلك.

From al-Halabi, from Abu Abdullah (peace be upon him), he said: I asked him about the saying of Allah the Mighty and Majesical: "And do not keep them to cause harm in order to transgress [Quran, 2:231]." He said: It is the man who divorces, until when her waiting period is about to end he takes her back, then divorces her. He does this three times, so Allah the Mighty and Majestic forbade that.

Hadith 28311

وعن زرارة، وحمران ابني أعين، ومحمّد بن مسلم، عن أبي جعفر، وأبي عبدالله (عليهما السلام)، قالوا: سألناهما عن قوله: (ولا تمسكوهن ضرارا لتعتدوا)

From Zurarah and Humran, the two sons of A'yan, and Muhammad ibn Muslim, from Abu Ja'far and Abu Abdullah (peace be upon them both), they said: We asked them about His saying: "And do not retain them to harm them so that you transgress [Quran, 2:231]."

قالا: هو الرجل يطلق المرأة تطليقة واحدة، ثمّ يدعها حتى إذا كان آخر عدتها راجعها، ثمّ يطلقها أخرى، فيتركها مثل ذلك فنهى الله عن ذلك.

They (the two Imams) said: This is the man who divorces his wife once, then leaves her until when her waiting period is about to end, he takes her back, then divorces her again, and leaves her in the same manner. So Allah forbade this.

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CHAPTER 35

The Fleeing Of A Slave And The Ruling On His Return

[Hadith 28312 to 28312]

Hadith 28312

عن عمّار الساباطيّ، عن أبي عبدالله (عليه السلام)، قال: سألته عن رجل أذن لغلامه في امرأة حرّة فتزوّجها، ثمّ إن العبد أبق من مواليه، فجاءت امرأة العبد تطلب نفقتها من مولى العبد،

From Ammar al-Sabati, from Abu Abdullah (peace be upon him), he said: I asked him about a man who gave permission to his slave to marry a free woman, so he married her. Then the slave fled from his masters, and the slave's wife came seeking her maintenance from the slave's master.

فقال: ليس لها على مولى العبد نفقة، وقد بانت عصمتها منه ؛ لأنّ إباق العبد طلاق امرأته، وهو بمنزلة المرتد عن الاسلام،

He said: She has no right to maintenance from the slave's master, and her bond with him has been severed, because the slave's fleeing constitutes a divorce from his wife, and he is in the position of one who has apostatized from Islam.

قلت: فان هو رجع إلى مولاه، أترجع امرأته إليه؟

I said: If he returns to his master, does his wife return to him?

قال: إن كان قد انقضت عدتها منه، ثمّ تزوّجت زوجا غيره، فلا سبيل له عليها، وإن كانت لم تزوّج، فهي امرأته على النكاح الأوّل.

He said: If her waiting period has ended and she has married another husband, then he has no way to her. But if she has not married, then she is his wife according to the original marriage contract.

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